



## Conditions of Sale

Effective 1st October 2003

- 1. DEFINITION**

In these terms and conditions:-  
"Goods" means all products and services agreed to be supplied by Pakaflex to the Buyer under any contract, arrangement or understanding between Pakaflex and the Buyer;  
"Buyer" means the person to whom any quotation is made, any person offering to contract with Pakaflex on these terms and conditions and any person who purchases goods from Pakaflex;  
"Contract" means any contract for the sale or supply of goods entered into between Pakaflex and the buyer;  
"Pakaflex" means Pakaflex Pty Ltd and its agents, servants, and employees and any related bodies corporate as defined in the Corporations Law (if such related body corporate is named as the party making or accepting the Buyers order of goods); and "Quoted Date" means the date of delivery as agreed between the buyer and Pakaflex.
- 2. STATUTORY PROVISIONS**

These terms and conditions:

  - a) shall be subject to the provisions of the Trade Practices Act 1974, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation ("the Statutory Provisions");
  - b) unless Pakaflex otherwise agrees in writing, these are the only terms and conditions of sale to which Pakaflex will be bound and the buyer agrees to these terms and conditions will in all circumstances prevail over the buyers terms and conditions of purchase (if any) and
  - c) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the goods including, but not limited to, those relating to the performance of the goods or the results that ought to be expected from using the goods.
- 3. WARRANTIES**

Subject to the Statutory Provisions

  - a) Pakaflex warrants that the goods supplied are of merchantable quality
  - b) Pakaflex's liability for breach of sub-clause 3(a) or a condition or warranty implied into this contract by law including without limitation the Statutory Provisions (other than a condition implied by section 69 of the Trade Practices Act) is limited to any one of the following as determined by Pakaflex:
    - (i) The replacement of the goods or the supply of equivalent goods;
    - (ii) The repair of the goods or payment of the cost of having the goods repaired; or
    - (iii) The refund of the price paid by the buyer for the goods.

The buyer will examine the goods for defects and shall notify Pakaflex of any defects in writing within 30 days of delivery. If the buyer does not notify Pakaflex within 30 days of delivery the buyer shall be deemed to have accepted the goods.

To the extent the law permits and notwithstanding any other clause of these terms and conditions, Pakaflex excludes all liability whatsoever to the buyer arising out of or in any way connected with a contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not limited to:

  - a) any loss of income, profit or business;
  - b) any loss in the nature of overhead costs; and
  - c) any loss of goodwill or reputation.
- 4. ADVICES**

The buyer hereby acknowledges that it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Pakaflex in relation to the goods or their use or application
- 5. DELIVERY**

Pakaflex will make all reasonable efforts to have goods delivered to the buyer on the date agreed between parties as the quoted date, but Pakaflex shall not be liable for any failure to delivery or delay in delivery for any reason.
- 6. RISK**
  - a) Unless otherwise agreed in writing, all risk in and to the goods purchased shall pass to the buyer upon delivery to the buyer or his agent or to a carrier commissioned by the buyer.
  - b) Without in any way limiting the operation of the foregoing, upon delivery of the goods to the buyer or his agent to a carrier commissioned by the buyer the buyer covenants and warrants to Pakaflex that, in the storage and handling of the goods, the buyer and his agents and carriers shall comply with all relevant environmental law as and regulations, and do comply with all necessary and or relevant permits or licences pertaining to storing and handling of the goods, and the buyer shall ensure that the buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the goods.
  - c) If Pakaflex does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification to the buyer that they are ready, the buyer shall be deemed to have taken delivery of the goods from such a date. The buyer shall be liable for storage charges payable monthly on demand.
- 7. TITLE**
  - a) Title in and to the goods shall not pass to the buyer until payment in full for all goods is made.
  - b) The buyer acknowledges that until title in and to the goods passes to the buyer in accordance with this clause, the buyer holds the goods as bailee of Pakaflex and that a fiduciary relationship exists between the buyer and Pakaflex.
  - c) Until title in and to the goods passes to the buyer in accordance with this clause the buyer shall store the goods separately and in such a manner that they are clearly identified as the property of Pakaflex. Pakaflex shall be entitled at any time until title in and to the goods passes to the buyer to demand the return of the goods and shall be entitled without notice to the buyer and without liability to the buyer to enter any premises occupied by the buyer in order to search for and remove the goods.
- 8. PRICE**

Unless otherwise agreed in writing, the price charged for the goods shall be the price ruling as determined by Pakaflex at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.
- 9. TRANSACTION TAX**

Where a transaction tax, including a goods and services tax (GST) and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, Pakaflex may recover from the buyer an additional amount on account that transaction tax in accordance with clause 10.
- 10. PAYMENT AND DEFAULT**
  - a) Subject to sub-clause 10(c).. Hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by Pakaflex.
  - b) If any of the events set out in (i) to (v) below occur, Pakaflex may at its option withhold further deliveries or cancel the contract without notice to the buyer and without prejudice to any other action or remedy which Pakaflex has or might otherwise have had and all moneys owing and outstanding to Pakaflex on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:
    - (i) The buyer makes default in any payment or is unable or states that it is unable to pay its debts as and when they fall due;
    - (ii) The buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the buyers estate or any part of the buyers property or assets;
    - (iii) The buyer being a company passes a resolution for it winding up or enters into liquidation or has an application for winding up filed against it;
    - (iv) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the buyer;
    - (v) The buyer experiences any analogous event having substantially similar effect to any of the events specified above.
  - c) Notwithstanding sub-clause 10(a). hereof Pakaflex may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the buyers credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Pakaflex shall be final and Pakaflex accepts no liability or responsibility for any loss, howsoever arising, incurred by the buyer due to the operation of this condition
- 11. PORTABLE MAGAZINES AND PALLETS**

Unless otherwise agreed to in writing all portable magazines and pallets on which goods are delivered remain the property of Pakaflex and must be returned at the buyers expense and in good order and condition to the factory or the store of Pakaflex from which they were delivered. Portable magazines and pallets will be deemed to be still in the buyers hands until received at such factory or store. To extend the law permits, all risks whatsoever associated with the portable magazines and pallets rest with the buyer absolutely and the buyer agrees to indemnify Pakaflex in respect of any portable magazine or pallet that is not returned in good order and condition to Pakaflex within one month of delivery of goods.
- 12. GENERAL LIEN**

In addition to any right of lien to which Pakaflex may be entitled under the common Law, Pakaflex shall be entitled to exercise a general lien over all items in its possession belonging to the buyer until the buyer has paid in full for all goods supplied by Pakaflex to the buyer. Pakaflex may in its sole discretion sell any item that is subject to the said lien, provided that Pakaflex shall pay to the buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Pakaflex in respect of goods that have been delivered by it to the buyer and all reasonable costs of sale incurred by Pakaflex.
- 13. SEVERANCE**

If any provisions of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and remaining provisions of these terms and conditions shall not in any way be affected or impaired.
- 14. FORCE MAJEURE**

Deliveries may be totally or partially suspended by Pakaflex during any period in which Pakaflex may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Pakaflex's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary material, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Pakaflex shall not incur any liability to the buyer in respect of such suspension.
- 15. GOVERNING LAW**

The supply of goods under these terms and conditions is governed by the law at the State of Victoria and Pakaflex and the buyer submit to the non-exclusive jurisdiction of the courts of the State of Victoria.