

IPACKCHEM (PTY) Ltd - Conditions of Sale (“Conditions”)

1 Definitions

The “Seller” means IPACKCHEM (PTY) Ltd (Registration Number 2014/159875/07) whose registered office is 8 Milano Close, Cosmo Business Park, Cosmo City, Gauteng, 2087.

The “Customer” means the person(s), firm or company who purchases any goods from the Seller. The “Contract” means any contract between the Seller and the Customer to which these Conditions apply.

“CPI” means the Consumer Prices Index published by Stats SA or any successor ministry or department, or any index subsequently replacing the Consumer Prices Index.

“Specification” means the description and/or specification of the goods, as agreed with the Customer.

2 Application of these Conditions

Unless specifically varied in writing between the Seller and the Customer, these Conditions apply to the Contract to the exclusion of all other terms and conditions (including without limitation any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or other correspondence or documentation and any terms and conditions which are implied by trade, custom, practice or course of dealing).

3 Order

3.1 Each order made by the Customer for any goods shall be deemed to be an offer from the Customer to purchase the goods subject to these Conditions. The Customer is responsible for ensuring the terms of the order are complete and accurate. No order shall be deemed to have been accepted by the Seller until the Seller confirms the acceptance of such order in writing or by other means agreed with the Customer or delivers the goods to the Customer (if earlier), at which point the Contract shall come into existence.

3.2 The Customer waives any right it might otherwise have to rely on any terms endorsed upon, delivered with or contained in any documents of the Customer which are inconsistent with these Conditions.

3.3 Any quotation given by the Seller shall not constitute an offer. A quotation (unless previously withdrawn) is given as valid for 30 days from issue and is subject to written confirmation by the Seller on receipt of the Customer's order. However, the Customer agrees that the Seller may adjust the price upward or downward due to fluctuations in the cost of resin, and the Customer shall pay the price as at the date of despatch or collection, as applicable.

3.4 Unless otherwise agreed in writing by the parties, each sale shall be made and governed by FCA Incoterms*2020.

4 Price

4.1 All prices for the goods are set out in the order, and unless specifically stated, are exclusive of all taxes, duties, imposts or levies including, but without limitation, value added tax and other sales taxes and import/export duties and charges, which, if applicable, shall be payable by the Customer.

4.2 The Customer agrees that the Seller may adjust the prices for the goods with effect from 1 January of each year to reflect increases in the CPI during the previous year. The Seller shall give the Customer not less than one month's prior notice in writing of the proposed changes.

4.3 Unless otherwise agreed in writing between the Seller and the Customer, the Seller may additionally charge for the costs of loading, unloading, carriage, insurance and any specialised packaging in respect of the goods (to the extent that the Seller is responsible for arranging such matters as part of the sale).

5 Payment

5.1 Payment for the goods shall be made in net cleared funds (without deduction, set-off, counterclaim or any other deduction, except for any deduction or withholding required by law) according to the agreed payment terms. Invoices will be issued generally on despatch of the goods or alternatively when the goods are available for collection. If the Customer fails to take delivery of the goods, the Seller shall be entitled to invoice the Customer for the price at any time after the Seller has notified the Customer that the goods are ready for delivery.

5.2 All payments under the Contract shall be made in South African Rands unless otherwise agreed in writing between the parties.

5.3 Time for payment shall be of the essence.

5.4 The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Seller to the Customer.

5.5 If the Customer fails to pay the Seller any sums due in respect of the goods (without prejudice to the Seller's other rights and remedies):

(a) The Customer will be liable to pay interest to the Seller on the sums due from the due date for payment, until payment is actually made whether before or after judgement at the South African Prime Interest rate of 3%, accruing daily;

(b) The Seller will be entitled to withhold or cancel subsequent performance of Seller's obligations under the Contract or any other order and/or require the Customer to pay for the goods prior to their despatch, collection or performance. In case of a Contract involving more than one delivery instalment, if default is made in respect of payment on the due date for any one instalment, the Seller shall be entitled to treat the whole Contract as repudiated by the Customer and (without prejudice to the Seller's other rights and remedies) claim damages accordingly.

6 Description of the Goods

6.1 Goods will be produced to the Specification agreed between the Seller and the Customer.

6.2 All other drawings, descriptive matter, materials, samples and advertising issued by the Seller are issued for the sole purpose of giving an approximate idea of the goods to be produced. No representation is made that the goods will correspond to such other drawings, description, materials, samples or advertising and they will not form part of the Contract.

7 Delivery

7.1 Where a single delivery is agreed in the Contract without specifying a date or by other agreement, the Customer shall take delivery of and accept the goods within 14 days of being notified by the Seller that the goods are ready for delivery.

7.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in the transit or delivery of the goods caused by the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of goods.

7.3 If no dates are specified for delivery, delivery will be within a reasonable amount of time.

7.4 Where deferred deliveries are agreed, the Customer shall take delivery of and accept all deliveries of the goods within 2 months (unless otherwise agreed in writing between the parties) of the specified first delivery date or availability date. In the event of failure to take any delivery within the time period, that delivery shall be deemed to have occurred and the Customer shall be invoiced accordingly.

7.5 Where deferred deliveries are agreed, each delivery made pursuant to the Contract shall be treated separately and any failure relating to one delivery shall not vitiate the Contract as to the remaining deliveries.

7.6 Storage costs will be charged where goods are held at the Seller's premises beyond the period designated under these Conditions for taking delivery. Goods will be stored at the Customer's risk.

7.7 The liability of the Seller for non-delivery shall be limited to replacing the goods within a reasonable time of written notification of non-delivery by the Customer or issuing a credit note against any invoice issued in respect of the relevant goods.

8 Quantity Variations

The Customer shall not be entitled to object to or reject the goods or any of them by reason of surplus or shortfall of +5% to the quantity of goods ordered.

9 Acceptance of the Goods

9.1 The Seller warrants that the goods at the date of delivery:

(a) Conform to the Specification; and

(b) Are free from defects (in material and workmanship).

9.2 The Seller's obligations for breach of warranties given above shall be limited, at the Seller's options, either crediting the Customer with the Contract price or replacing the goods or any part thereof provided that:

(a) Written notification of non-conformance or defect is received by the Seller not more than 10 days after the non-conformance or defect in question have come to the attention of the Customer or ought reasonably have come to its attention; and

(b) If such defect is caused in transit, written notification is received by the Seller within such time as will enable the Seller to comply with the time limit and procedure of carriers by whom the goods were transported;

(c) The goods have not been used or processed by the Customer;

(d) The Seller is given a reasonable opportunity after receiving the notice of examining such goods;

(e) After examination, the Seller is satisfied that the goods are non-conforming or defective; and

(f) The Customer (if asked to do so by the Seller) returns such goods to the Seller's place of business at the Customer's cost.

In any event, the Seller shall not be liable if the non-conformity or defect arises due to the Customer having stored the goods under unsuitable conditions or transported or used the goods in a way which would not be considered as good practice.

9.3 Provided that the Seller has complied with its obligation to replace or credit the Customer in respect of non-conforming or defective goods, the Seller shall have no further liability to the Customer.

9.4 These Conditions shall apply to any repaired or replacement goods supplied by the Seller.

10 Limitation of Liability

10.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.2 For the avoidance of doubt, the Seller does not warrant that the goods are fit for any purposes for which the buyer may use the goods, regardless of whether the Customer advised the Seller of its intent to use those goods for a particular purpose.

10.3 Nothing in these Conditions shall exclude or limit the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

10.4 Any claim by the Customer which is based on any defect in the quality or condition of the goods or their failure to correspond with the Specification shall (whether delivery is refused by the Customer or not) be notified to the Seller within 10 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the defect or failure becomes apparent. If delivery is not refused, and the Customer does not notify the Seller accordingly, the Customer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure.

10.5 The Seller's total liability in contract, tort (including but not limited to negligence, breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance of the Contract (including any financial loss incurred by the Customer due to product recall) shall be limited to the price of the order to which the Contract relates.

10.6 The Seller shall not be liable to the Customer for any indirect or consequential loss or damage (including without limitation loss of profit, loss of business, diminution of goodwill) costs, expenses or other claims for consequential compensation whatsoever which arise in connection with the Contract.

10.7 Subject to the Conditions, where any part of the goods supplied by the Seller are not manufactured or processed by the Seller or any member of the Seller's group, the Seller shall only be liable to the Customer in respect of non-conformity or defect of the goods to the extent that the Seller is able to recover any loss or damage from the relevant third party.

11 Customer Property

11.1 The Customer's property supplied to the Seller whether by the Customer or by any other party on behalf of the Customer shall be held, used and transported, if necessary, at the Customer's risk.

11.2 The Customer shall ensure that any property supplied shall be supplied in a timely manner and in sufficient quantities to cover spoilage.

11.3 Unless instructions are received to the contrary, all such Customer property may be destroyed after a period of 12 months from the time they are last used.

12 Ownership of Materials and Equipment

Unless otherwise agreed, all materials, equipment and tools used in production of the goods shall remain the property of the Seller even if the Customer has directly or indirectly contributed to their creation or cost.

13 Materials Supplied by the Customer

Where any materials (which shall include artwork) are supplied by the Customer or by a third-party supplier directly on behalf of the Customer in connection with the Contract, the Seller shall not be liable for any non-conformity or defect arising from the quality of the materials or for delay caused by the failure of the Customer or the third-party supplier to supply the materials in a timely manner. The Customer shall be responsible for any additional costs that are incurred by the Seller if the materials so supplied are not suitable or delayed.

14 Intellectual Property Rights

14.1 Unless otherwise agreed in writing by the Seller and the Customer, any intellectual property rights (including without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications in respect thereof) (“Intellectual Property Rights”) prepared, developed or created by the Seller in connection with the performance of the Contract shall be and remain vested in the Seller. Therefore, to the extent required, the Customer hereby agrees, without payment, to execute all documents and take such other actions as may be necessary to ensure that such Intellectual Property Rights are registered and/or fully vested or remain in the Seller.

14.2 The Seller shall not be responsible for any fault, error, illegality or any infringements of third-party Intellectual Property Rights which are contained in the specification of the goods or materials (including without limitation, artwork) supplied by the Customer. The Customer shall indemnify and keep indemnified the Seller from and against any and all claims, costs, expenses, demands, losses, damages, losses, damages and fees (including reasonable legal and other professional fees) arising from any claims or complaints made against the Seller by a third party with regard to such matters including infringement of third party Intellectual Property Rights where the fault, error, illegality or infringement in question arises from the Seller producing or reproducing to the Customer's order, instructions and/or Specification.

15 Title

15.1 Title to the goods shall remain with the Seller and shall not pass to the Customer until payment in full of the price of goods, and all other goods agreed to be sold by the Seller to the Customer for which payment is due, and all other sums due at that time from the Customer to the Seller (whether under these Conditions or otherwise) is received by the Seller.

15.2 Until the Customer has obtained title to the goods, the Customer:

(a) grants the Seller and irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

(b) shall keep the goods properly stored and protected and in such a manner that the goods are clearly identifiable as the property of the Seller.

(c) shall not remove, deface or obscure any identifying mark or packaging on or relating to the goods.

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 18.2.

16 Assignment

16.1 The Seller shall, without notice, be entitled to assign or subcontract all or any of its obligations under the Contract to any company within the Seller's Group. The Seller's Group in this context shall include its subsidiary and holding companies from time to time. The terms ‘subsidiary’ and ‘holding company’ shall have the meanings ascribed to them in law.

16.2 The Customer shall not assign the Contract or any part of it without the prior written consent of the Seller.

17 Force Majeure

The Seller reserves the right to post-pone the date of delivery or to cancel the Contract or reduce the volume of the goods to be delivered to the Customer (without liability to the Customer) or otherwise suspend its obligations under the Contract if it is prevented from or delayed in the performance of the Contract for circumstances beyond the reasonable control of the Seller, including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes, fuel shortages or other labour disputes (whether or not relating to Seller's workforce) or restraints or delays affecting carriers, customs procedures, the import, export or transit of goods or inability or delay in obtaining supplies of adequate or suitable materials provided in the event that the force majeure continues for a continuous period of 3 months, the Seller shall be entitled to give notice in writing to terminate the Contract without further liability.

18 Termination

18.1 A Contract once formed cannot be amended or cancelled except by mutual agreement of the parties in writing and then only on terms that fully indemnify the Seller.

18.2 All payments payable to the Seller under the Contract shall become immediately due upon termination of the Contract notwithstanding any other provision in the Contract. The Seller may (without prejudice to its other rights or remedies accrued at that date) cancel and/or suspend further performance of the Contract including without limitation deliveries or terminate the Contract, by giving notice to the Customer, with immediate effect and without liability to the Customer if:

(a) The Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing of such payment;

(b) The Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 20 days of the Customer being notified in writing to do so;

(c) The Customer ceases, or threatens to cease, to carry on business; or

(d) The Customer enters any composition or arrangement with or for the benefit of its creditor or have receiver of its assets or material part thereof appointed or enter liquidation (either voluntary or compulsory) or becomes generally unable to pay its debts when they become due or is deemed unable to pay its debts within the law; or

(e) The Seller reasonably believes that any of the events above are about to occur in relation to the Customer.

18.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed before the date of termination.

18.4 Any provision of the Contract which is expressed or by implication intended to take effect or continue in force on or after termination shall take effect or remain in full force (as applicable) on termination.

19 General

19.1 Waiver of any or all these Conditions shall not prejudice or affect the Seller's rights and remedies in respect of any subsequent breach, non-performance or non-observance by the Customer of any Conditions of the Contract. Waiver by the Seller of breach of Contract shall not prejudice subsequent enforcement.

19.2 If any one or more of these Conditions are held to be or becomes void or otherwise unenforceable for any reason under applicable law, the same shall be deemed omitted from the Contract and the validity and/or the enforceability of the remaining provisions of the Contract shall not be affected or impaired in any way as a result of that omission.

19.3 A person who is not a party to the Contract shall not have any rights to enforce any of the Conditions.

19.4 The Contract incorporating these Conditions sets out the entire understanding between the Seller and the Customer with respect to the sale and purchase of the goods and supersedes and replaces prior documentation, discussions, agreement and arrangement existing between the parties regarding the same subject matter.

19.5 Each of the Seller and the Customer shall keep confidential and shall not, without the consent of the other, disclose to any third party the terms or existence of the Contract or any other information of the confidential or sensitive nature of the other party except that disclosure shall be allowed to such of the parties' agents, subcontractors and advisers who need to know the confidential information in proper performance of their duties. This obligation shall not apply any information a party becomes bound to disclose under law or rules of any governmental or regulatory body.

19.6 All notices shall be made in writing and delivered by hand or sent by pre-paid first-class post (or airmail to outside SA) or sent by facsimile transmission to the registered office of the other party. Notices shall be deemed to have been received if sent by pre-paid first-class post, 2 days after posting, if sent by airmail, 5 days after posting, if delivered by hand, on the day of delivery, if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

19.7 Where the destination of the goods is outside South Africa, the Customer shall be responsible for complying with any legislation or regulations governing the use, sale or importation of the goods in the country of destination, the payment of applicable taxes or duties and declarations and the transportation and storage of goods including without limitation health and safety and environmental legislation.

19.8 The Contract shall be governed by and construed in accordance with South African law and the parties submit to the exclusive jurisdiction of the South African courts.