



Terms for the Supply of Packaging Material – New Zealand

These terms are effective from the date of the Order Confirmation and are between Tetra Pak New Zealand Limited (Company No 559009) of Waikato Innovation Park, Ruakura Lane, Hamilton 3216 New Zealand (“**Tetra Pak**”) and the Customer named in the Order Confirmation (“**Customer**”).

1. Duration

- 1.1 A binding obligation to deliver packaging material shall only arise upon confirmation of the order by Tetra Pak (“Order Confirmation”).
- 1.2 Where the Customer has not entered into a term Agreement for the Supply of Packaging Material with Tetra Pak, these terms shall apply to each consignment of packaging material ordered by Customer set out in the Order Confirmation.

2. Delivery

- 2.1 Delivery shall be as per the terms set out in the Order Confirmation (ie. DAP/DDF/FCA Incoterms 2010).
- 2.2 Tetra Pak shall deliver the packaging material on the delivery date as specified in the Order Confirmation.
- 2.3 If timely delivery is delayed due to factors within the reasonable control of Tetra Pak, Customer shall, after a grace period of two working days beyond the delivery date, be entitled to claim liquidated damages from Tetra Pak of 0,5% of the purchase price of the delayed packaging material per each commenced working day of delay, up to a maximum of 5% of this price. Customer also has the right, in such circumstances, to cancel the delayed part of the purchase order if the delayed packaging material has not been delivered within 10 working days from the end of the grace period.
- 2.4 Customer’s sole and exclusive remedy in respect of delay in delivery of packaging material shall be as set out in Clause 2.3 and Customer has no right to claim any further compensation for losses even if the amount of such losses exceeds the amount specified in Clause 2.3.
- 2.5 If Customer fails to accept delivery of packaging material on the delivery date, Customer shall be liable for all costs incurred by Tetra Pak in handling, transporting, storing and insuring such packaging material.
- 2.6 Tetra Pak shall be entitled to withhold delivery of packaging material as long as payment for any prior delivery of packaging material remains overdue. Tetra Pak shall immediately inform the Customer accordingly.

3. Warranty

- 3.1 Tetra Pak warrants that the packaging material shall not be Defective, in the meaning set out in Clause 3.2 below. Tetra Pak makes no other warranties or promises of any kind, whether express or implied, and Customer acknowledges and warrants to Tetra Pak that

all packaging materials being supplied to Customer under this Agreement are for business purposes only and not for any domestic, personal and/or household use, and the provisions of the Consumer Guarantees Act 1993 are specifically excluded as between Tetra Pak and Customer. If it has been established that the packaging material delivered to Customer is Defective, Tetra Pak shall replace, free of charge to Customer, or refund to Customer any monies paid by Customer in respect of the purchase price for such Defective packaging material. To the extent that such non-conformity or defect has arisen from or been contributed to by any act or omission or neglect by Customer Tetra Pak's obligations hereunder shall be reduced accordingly.

- 3.2 The packaging material delivered to Customer shall be considered as defective ("Defective") if, and only if, the packaging material at the time of delivery (i) is not in conformity with the specifications provided by Tetra Pak in the order confirmation or otherwise, or (ii) is not free from defects in materials and workmanship.
- 3.3 Customer's sole and exclusive remedy in respect of the supply of Defective packaging material shall be as set forth in this Clause 3. If Tetra Pak is included in a third-party claim relating to the supply of the packaging material, Customer shall indemnify and hold Tetra Pak harmless against such liability unless and to the extent such liability is *attributable to Defective packaging material or otherwise attributable to Tetra Pak*.
- 3.4 Subject to the limitations set forth in this Clause 3 and provided the packaging material has been handled or used in accordance with these Terms and the specifications and guidelines provided by Tetra Pak, Customer shall be entitled to claim compensation from Tetra Pak for the following documented costs and losses ("Recoverable Losses"):
raw material, ingredients or other materials used in Customer's production and spoiled by using Defective packaging material;
- (i) production-related labor and utilities used during the time of Customer's production when using Defective packaging material;
 - (ii) sorting, disposal, recovery and freight of packages produced from Defective packaging material; and
 - (iii) other direct costs and direct losses incurred by Customer as a result of using Defective packaging material.

Customer's right to compensation for Recoverable Losses shall only include those costs and losses explicitly mentioned above and no other costs or losses shall be compensated.

- 3.5 Customer shall not be entitled to compensation for Recoverable Losses if the Defective packaging material has not been used in its production. Any compensation provided for under Clause 3.4 shall never exceed 500% of the net purchase price of the Defective packaging material, excluding freight cost, which has been used in Customer's production.

4. Claims Procedure

- 4.1 Customer shall inspect the packaging material without undue delay after delivery in order to discover any Defective packaging material that can reasonably be discovered at such

- inspection. Customer shall notify Tetra Pak of any such Defective packaging material discovered at this inspection immediately and in writing. Moreover, transportation damage or loss shall be notified on the consignment note at the time of delivery.
- 4.2 Customer shall carry out its production in such a way as to discover any Defective packaging material that can reasonably be discovered at the start of production. Customer shall without undue delay, and in no case later than within 10 working days, notify Tetra Pak in writing of any packaging material which is discovered to be Defective during the production process.
 - 4.3 If Customer fails to notify Tetra Pak within the time limits set out in this Clause 4, Customer shall lose its rights under Clause 3.
 - 4.4 In case the packaging material which appears Defective is used in Customer's production, Customer shall immediately cease that portion of its production that is affected. Customer shall use its commercially reasonable best efforts to mitigate damages relating to any defective material. Where the packaging material which appears Defective may give rise to Recoverable Losses, Customer shall without undue delay, and in no case later than within 10 working days, notify Tetra Pak in writing. Customer shall bear the risk of any Recoverable Losses resulting from Customer's failure to comply with its obligations set out in Clause 4.5.
 - 4.5 Any notice of Defective packaging material shall contain a description thereof. Customer shall within 10 working days after such preliminary notice has been made submit a complete description of the Defective packaging material and a sample of the Defective packaging material to Tetra Pak. If applicable, Customer shall also provide reasonable proof of the Recoverable Losses for which compensation is claimed.
 - 4.6 Tetra Pak shall thereafter, without undue delay and with Customer's assistance, examine if and to what extent the packaging material is Defective and whether or not the claim for compensation of Recoverable Losses shall be approved.
 - 4.7 Customer's rights under Clause 3 are limited to packaging material which appears Defective within 12 months after production, unless otherwise specified in the specifications provided by Tetra Pak in the Order Confirmation.
 - 4.8 Tetra Pak may issue guidelines with practical instructions and advice on delivery inspection, fault-tracing routines in production, storing and use of the packaging material and other similar areas which clarify Customer's obligations as set out in these Terms.

5. Permissible Tolerance

Tetra Pak shall be entitled to deliver up to 10% above or below the quantity of packaging material ordered by Customer as set out in the Order Confirmation, and invoice Customer accordingly.

6. Price and Payment

- 6.1 Customer shall pay the purchase price for the packaging material. The purchase price shall be the price set out in the Order Confirmation or, in case of application of Clause 5 above, the invoice for the supply of the packaging material. All prices are exclusive of goods and services tax and any other taxes, all of which shall be paid by Customer. The

price, as set out in Tetra Pak's invoice, is payable in full without any deduction, withholding or set-off for any reason.

- 6.2 Payment shall be made within 30 days from the date of the invoice.
- 6.3 If Customer fails to pay any sum when due to Tetra Pak, then Tetra Pak shall be entitled to charge interest on the unpaid amount at the Reserve Bank of New Zealand's published cash rate plus 3.5% per annum from the due date until payment is made in full.

7. Trademarks and Other Intellectual Property Rights

- 7.1 Customer expressly releases Tetra Pak from any liability for and agrees to indemnify and hold harmless Tetra Pak, its subsidiaries and sub-suppliers against all actions, claims or damages which may be caused by or result from the printing or use of the designs, trade names, trademarks (save for Tetra Pak's trademarks) colors, patterns, or wording printed on the packaging material ordered by Customer.
- 7.2 Tetra Pak hereby grants Customer a royalty-free, non-exclusive and non-transferable license to use Tetra Pak's trademarks, registered or established through use. Customer agrees to use such trademarks only as instructed by Tetra Pak and printed on food and beverage packages made of packaging material supplied by Tetra Pak. Customer may grant a sub-license under the trademarks provided that the sub-licensee has accepted in writing the stipulations stated in this Clause 7.
- 7.3 Customer undertakes not to claim ownership to any trademarks, industrial designs or any other intellectual property rights or parts thereof of Tetra Pak, either by application or use.

8. Consequential Losses

- 8.1 **Nothing express or implied in this Agreement will confer any liability on Tetra Pak in respect of any:**
- (a) **indirect, consequential or special loss, damages, cost or expense suffered or incurred by Customer including but not limited to loss of production, down time losses, loss of profit, loss of contracts, loss of information or data, or loss of good will as a direct or indirect result of a breach by Tetra Pak of any of its obligations under this Agreement; or**
 - (b) **loss, damage, cost or expense suffered or incurred by Customer, to the extent to which this results from any act or omission by Customer.**
- 8.2 The limitations on Tetra Pak's liability set forth in this Agreement shall not apply in case Tetra Pak's non-performance of its obligations is the result of gross negligence or if such limitations are found to be invalid under the applicable law. Such limitations shall further not affect Tetra Pak's liability for personal injury, which shall be determined in accordance with the applicable law.

9. Force Majeure

Tetra Pak will be entitled to suspend performance hereunder to the extent that such performance is impeded or made unreasonably onerous by any circumstance beyond its

reasonable control including but not limited to industrial disputes, fire, war (whether declared or undeclared), terrorism, epidemics, severe weather, volcanic eruptions, flood, extensive military mobilization, insurrection, mass protests, requisition, seizure, embargo, export control regulations, governmental or judicial acts, restrictions in the use of power and defects and delays in deliveries by sub-contractors due to any circumstances referred to in this clause. Tetra Pak shall notify Customer as soon as practicable of the circumstances affecting it and will take reasonable steps to mitigate their length and effect.

10. Severability

If any provision herein is found to be illegal, invalid or unenforceable by operation of New Zealand law or otherwise such part will be adjusted only to such extent that it will no longer be found to be illegal, invalid or unenforceable under New Zealand law; to give effect to the original intent of the parties to the maximum extent possible; and in such a way as to ensure that all other provisions of this Agreement will not be affected and remain in full force and effect.

11. Governing Law and Jurisdiction

This Agreement (and all non-contractual or other obligations arising out of or in connection with it) is governed by the laws of New Zealand and the parties unequivocally and irrevocably submits to the jurisdiction of the courts of New Zealand.

12. Confidentiality

12.1 In connection with the supply of packaging material pursuant to these terms, either party may disclose to the other party information which is confidential or proprietary to it including, by way of example but not by way of limitation, confidential business, financial or technical information ("**Confidential Information**"). A party receiving Confidential Information (the "**Receiving Party**") shall treat any Confidential Information that it receives from the other party (the "**Disclosing Party**") confidential and shall not disclose it to any third party in whole or in part, or use such information other than for the purposes for which such Confidential Information has been disclosed. The foregoing restriction shall not apply to (i) information which is or comes into the public domain through no fault of the Receiving Party, (ii) information that the Receiving Party can provide evidence was known to the Receiving Party prior to the disclosure, and (iii) information that the Receiving Party can provide evidence was independently developed by the Receiving Party without the benefit of the Confidential Information of the Disclosing Party.

12.2 Notwithstanding provision 12.1, the Receiving Party shall be permitted to disclose Confidential Information of the Disclosing Party (i) to any company in the same group of companies as the Receiving Party subject to the same duties of confidentiality; (ii) to its professional advisers; (iii) to any sub-contractors engaged in the performance of its obligations under this Agreement subject to the same restrictions of confidentiality; and/or (iv) if it has been ordered to disclose Confidential Information by a competent court or authority provided that it shall immediately notify the Disclosing Party of such disclosure, use reasonable efforts to limit the extent of the disclosure, and will inform the court or competent authority of the rights of the Disclosing Party in the Confidential Information.

12.3 The parties agree to treat these Terms as Confidential Information.

12.4 Notwithstanding Clause 12.1 above, Tetra Pak shall have the right to use all information disclosed by the Customer to Tetra Pak in connection with the supply of packaging material (including any Confidential Information) and to share such information with its third-party suppliers, for the purposes of providing benchmarks for other customers and to develop and improve Tetra Pak's products and services, provided that such all information (including any Confidential Information) is anonymised so that it is not possible to identify a link between the information and the Customer.

13. Assignment

Neither party will assign or transfer any benefit or obligation hereunder without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, Tetra Pak may assign the benefits and/or obligations hereunder to an affiliated or associated company within the Tetra Laval group of companies without the prior consent of Customer, provided, however, that Tetra Pak shall remain responsible for the proper fulfillment of all of its duties as agreed.

14. Entire Agreement

These terms constitute the entire agreement between the parties relating to the subject matter hereof and supersedes all previous communications, representations, or agreements, whether oral or written. Tetra Pak will not be bound by any statements made by any Tetra Pak representative or appearing in any printed material, which are not also stated herein and Customer acknowledges that it has not relied on any such statement in entering into this Agreement. No addition to or modification of any provision of these Terms will be binding upon either party unless made in writing and signed by its duly authorized representatives. No course of dealing, trade usage or course of performance will be relevant to explain or supplement any term terms set out herein. **Tetra Pak hereby rejects any different terms proposed by Customer, including those contained in any purchase order or in any other Customer document.**

15. Waiver

The action or failure to act by Tetra Pak or Customer to enforce any one or all of its rights will not act as a waiver or variation of that right nor be deemed to constitute acceptance of a breach of any of the provisions of these Terms.

16. Notices

Notices will be in writing and deemed valid with delivery confirmation either by email, courier service, facsimile or registered mail to the address for Tetra Pak stated above, and the address for Customer as stated in the Order Confirmation.

17. Survival

Any provision of these Terms which contemplates performance after termination will survive and remain in full force and effect. All provisions will survive the expiration or termination of this Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein.



18. GST

If goods and services tax (GST) pursuant to the Goods and Services Tax Act 1985 is levied or imposed on or in respect of any supply made under or in connection with these Terms, then the consideration provided for that supply is increased by the rate at which the GST is levied or imposed. Where any consideration is increased under this clause the increased consideration is payable within 7 days of receipt of a valid GST invoice from the relevant party.

Last updated 6 February 2013