

## AMCOR FLEXIBLES (NEW ZEALAND) LIMITED TERMS AND CONDITIONS OF SALE (05/21)

- To the maximum extent permitted by law, unless otherwise agreed in writing, all dealings between Amcor Flexibles (New Zealand) Limited (Company no. 1622911) and its New Zealand related bodies corporate comprising the Amcor Flexibles New Zealand Business Group ("Amcor") and any person, firm, company or customer ("Buyer") procuring any product, personal property, equipment or service ("Goods") from Amcor are subject to the Conditions of Sale set out below, as amended from time to time ("these Terms" or "this Agreement").
1. **Price**
    - 1.1. The purchase price contained in this Agreement is based upon rates and costs as at the date of this Agreement or where this Agreement arises from a quotation given by Amcor, as at the date of quotation and may change without notice. Amcor price lists may be varied by Amcor without notice, and such lists exclude imposts unless expressly stated. For the avoidance of doubt, Amcor reserves the right at any time before receiving payment to adjust prices to take into account currency fluctuations or material increases in raw material costs.
    - 1.2. Amcor shall only be responsible to comply with the regulations, bylaws, codes and standards agreed to under this Agreement and accepts no liability for any failure to meet any other regulations, bylaws, codes or standards. In the event of any change to regulations bylaw, code or standard with which Amcor is obliged to comply after the date of this Agreement, or where this Agreement arises from a quotation given by Amcor after the date of quotation, then any additional costs in meeting any such changes shall be to the account of Buyer. For the avoidance of doubt, to the maximum extent permitted by law, in addition to the foregoing, Amcor reserves the right to pass to Buyer any net increase in the cost of producing, transporting or supplying product, equipment or services, which Amcor incurs as a result of the introduction, operation or amendment of any scheme, mechanism or arrangement mandated by law which has a purpose of reducing, limiting or managing greenhouse gas emissions or concentrations
    - 1.3. Unless expressly agreed to by Amcor, prices do not include the costs incurred by Amcor arising from late notification by Buyer of a change to agreed delivery schedule, storage charges where Goods are not collected immediately upon being made available, or demurrage costs incurred by Amcor.
    - 1.4. Delivery costs included in price are representative of standard delivery only (that is, delivery between 8.30am to 5.00pm Monday to Friday (inclusive) in the place to which Goods are to be delivered, subject to that day not being a bank or public holiday). Any costs, charges or expenses incurred by Amcor to meet any variations to standard delivery are payable by Buyer.
    - 1.5. The price quoted is based on standard lead times being four (4) to six (6) weeks from when orders for Goods are accepted by Amcor and delivered to Buyer. All costs, charges or expenses incurred by Amcor to meet variations to standard are payable by Buyer.
    - 1.6. Amcor may invoice Buyer for all finished product made to order or forecast, including those not ordered by Buyer within three (3) months of manufacture, and for all product made to order or forecast if Buyer terminates the product line. Buyer must pay Amcor for all materials and packaging ordered or held in stock according to order or forecast.
    - 1.7. Minor deviations from approved colour or press proofs will not entitle Buyer to a price reduction or to refuse acceptance.
  2. **Taxes and Duties**
    - 2.1. Buyer shall pay Goods and Services Tax ("GST"), duty, government charges and any other taxes or duties assessed to or otherwise payable by Amcor in connection with the supply of Goods under this Agreement, in addition to the purchase price.
  3. **Payment**
    - 3.1. Time of payment is of the essence of these Terms.
    - 3.2. Unless other payment terms have been arranged, payment is due in full on the 20th day of the month following the month that Goods are dispatched by Amcor.
    - 3.3. Invoices issued pursuant to clause 1.6 and 25.3 are subject to the payment terms for credit purchases in clause 3.2 unless agreed to by Amcor in writing.
    - 3.4. In the case of export sales, payment shall be made by confirmed irrevocable letter of credit unless otherwise agreed. Letters of credit shall, unless otherwise agreed, be established through a first class bank and be irrevocable, confirmed and without recourse available for Amcor's draft at sight and otherwise in a form satisfactory to Amcor.
    - 3.5. Any additional payments due by Buyer pursuant to this Agreement shall be paid at the time provided for in this Agreement or, if no time is provided, within seven (7) days of payment being demanded in writing by Amcor.
    - 3.6. If Amcor at any time deems the credit of Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under this Agreement until provided with sufficient security. All costs and expenses incurred by Amcor as a result of such suspension and any recommencement shall be payable by Buyer upon demand.
    - 3.7. Receipt of a cheque, bill of exchange, or other negotiable instrument by Amcor shall not constitute payment and Buyer shall remain liable for the full purchase price until such cheque, bill of exchange, or negotiable instrument is paid in full.
    - 3.8. Amcor may apportion payments made by Buyer to outstanding accounts in such amounts and in such order as Amcor may determine in its sole discretion.
    - 3.9. If Buyer defaults in paying any account, it must pay, on demand, all costs, charges and legal expenses (on a full indemnity basis) and all collection costs incurred by Amcor to recover payment from Buyer.
  - 3.10. Queries regarding items shown on invoices issued by Amcor must be submitted by Buyer to Amcor within seven (7) days of the issue date of the relevant invoice.
  4. **Set-off**
    - 4.1. Amcor can set-off any amount which Buyer or any of its related bodies corporate owe to Amcor under this Agreement or any related order or contract against any amount which Amcor owes to Buyer or any of its related bodies corporate (whether under this Agreement, related order, contract or otherwise).
    - 4.2. Buyer is not entitled to withhold payment, set-off or to make any deductions from price without Amcor's prior written consent.
  5. **Interest for Late Payment**
    - 5.1. Any failure on the part of Buyer to make payment on the due date shall constitute a breach of this Agreement for which Buyer shall be liable to compensate Amcor by, to the extent permitted by law, immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until the date of payment at a rate equal to 10%; plus an administrative fee of \$100 NZD per invoice.
  6. **Delivery**
    - 6.1. Delivery shall be made at the address indicated in Amcor's quotation or acceptance or, if no address is indicated, delivery shall be made to Buyer's premises. Amcor shall use best endeavours to deliver Goods on the date, time and at the address specified by Buyer from time to time. Despite this, delivery shall be deemed to have occurred when Goods are actually delivered to Buyer's premises and regardless of whether Buyer fails or refuses to accept delivery.
    - 6.2. In the case of export sales, unless otherwise stated in Amcor's quotation or acceptance, delivery shall be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for despatch or earlier leave Amcor's custody for shipment to Buyer. Trans-shipment shall be allowed. Delivery may be effected by one or more shipments or instalments at Amcor's election.
    - 6.3. Without prejudice to any other rights and remedies which Amcor may have, Amcor may charge storage and transportation expenses if Buyer fails or refuses to take or accept delivery or indicates to Amcor that it will fail or refuse to take or accept delivery at the time specified in Amcor's quotation or acceptance or at any other times that Amcor is able to deliver the Goods.
    - 6.4. Delivery within a range of ten percent (more or less) than the quantity of Goods ordered by Buyer constitutes good performance, and the amount under or over supplied will be deducted or charged for pro rata.
    - 6.5. Amcor reserves the right to pass through to Buyer any net increase in the cost of transporting product, including freight and port charges, which Amcor may incur.
  7. **Risk**
    - 7.1. Risk of any loss, damage or deterioration of or to the Goods shall be borne by Buyer from the date of delivery of the Goods.
    - 7.2. Until property in Goods passes to Buyer, Buyer shall keep the Goods insured in the names of Amcor and Buyer for their respective rights and interests and will produce to Amcor on demand such evidence as Amcor may require to confirm the existence of such insurance. If Buyer defaults in performance of its obligations under this clause, Amcor shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by Buyer to Amcor upon demand.
    - 7.3. If any Goods are damaged or destroyed before property passes to Buyer, Amcor shall be entitled, without prejudice to any other rights or remedies under this Agreement, to receive all insurance proceeds which are payable in respect thereof, whether or not the purchase price of such Goods has become payable under this Agreement. Production of this Agreement by Amcor will be sufficient evidence of its right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Amcor. Any such insurance proceeds shall be applied by Amcor as follows:
      - a. First, in payment of the purchase price of Goods which are damaged or destroyed, if unpaid for;
      - b. Secondly, in payment of the outstanding purchase price of any other Goods supplied to Buyer by Amcor, whether under this Agreement or otherwise;
      - c. Thirdly, in payment of any other sums payable to Amcor by Buyer whether under this Agreement or otherwise;
      - d. Thereafter any balance shall be paid to Buyer.
  8. **Risk and Title**
    - 8.1. Title to the Goods is retained by Amcor until resold by Buyer pursuant to the authority granted by clause 8.2, provided that if the Goods are being purchased by Buyer other than for the purpose of resale, property in the Goods shall pass from Amcor to Buyer when the purchase price and all other monies payable to Amcor by Buyer (whether under this Agreement or otherwise) have been paid in full.
    - 8.2. Notwithstanding that title in the Goods is retained by Amcor, Buyer is authorised to sell the Goods in the ordinary course of business provided that such authority may be revoked by Amcor at any time if;
      - a. Amcor deems the credit of Buyer to be unsatisfactory, or

- b. Buyer is in default in the performance of its obligations under this Agreement or any other Agreement between Amcor and Buyer; or
- c. Buyer is declared bankrupt; or
- d. Buyer enters into any composition or arrangement with its creditors; or
- e. a resolution is passed or an application is filed for wind-up of Buyer; or
- f. a receiver is appointed in respect of all or any assets of Buyer.
- 8.3. When Goods in respect of which title has not passed to Buyer are sold by Buyer pursuant to clause 8.2, any book debt created upon the sale of such Goods and the proceeds of sale of such Goods, when received by Buyer, shall be held on trust by Buyer for Amcor, and any proceeds of sale so received by Buyer shall be placed in a separate bank account and first be applied towards satisfaction of all indebtedness of Buyer to Amcor and thereafter retained by Buyer. Notwithstanding the foregoing, Amcor authorises Buyer to deal with any such proceeds of sale received by Buyer as if such proceeds of sale were the absolute property of Buyer provided that such authority may be revoked by Amcor at any time if any one of the events referred to in clauses 8.2 (a) – (f) occurs. Goods not yet sold and which have not been paid for must be kept by Buyer such that they are readily identifiable. Amcor may at any time require delivery of Goods not paid for, and may enter Buyer's premises for such purpose.
- 8.4. For pallets owned by Amcor, those pallets remain the property of Amcor or its nominee at all time and Buyer must promptly return all pallets and reusable packaging provided by Amcor unless otherwise agreed to with Amcor. Buyer indemnifies Amcor for the cost of the hire and/or replacement of any pallets not returned within 14 days following Amcor's request and for any damage to the pallets. For pallets hired by Amcor, Buyer agrees that Amcor will de-hire pallets to Buyer at the time of delivery to Buyer, on and from which point the pallets become the property of Buyer. Until pallets are de-hired to Buyer, Buyer indemnifies Amcor for any lost pallets or damage to them.
- 9. Delay**
- 9.1. If any time for delivery of Goods or completion of this Agreement or any part thereof shall be stated in this Agreement, such time shall be approximate only and shall not be deemed to be of the essence of this Agreement.
- 9.2. Amcor will not be liable for failure to deliver Goods or for any delay in delivery of Goods where such failure or delay is occasioned by any event or cause whatsoever.
- 9.3. If the manufacture, supply or delivery of Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of Buyer, Amcor may, without prejudice to its other rights and remedies, require payment by Buyer of such portion of the contract purchase price as represents the extent to which Amcor has performed this Agreement or carried out work required by this Agreement up to the date such payment is required together with any expenses or additional costs incurred by Amcor as a result of such delay in the event of such delay continuing beyond a reasonable time, Amcor, without prejudice to its other remedies, terminate this Agreement.
- 10. New Zealand Product Number Symbol**
- 10.1. When applying the New Zealand product number symbol ("the Symbol") to Goods, Amcor will exercise all reasonable care and skill in accordance with the relevant recommended procedures as published from time to time by the New Zealand Institute of Paperboard Packaging Association Incorporated ("the institute") (as applicable), and in accordance with Buyer's specifications, provided that Buyer's specifications are consistent with the recommendations of the operation manual for product numbering and symbol marking as published from time to time by the New Zealand Product Number Association Limited ("the Association").
- 11. Warranties and Claims**
- 11.1. To the maximum extent permitted by law, all representations warranties and conditions relating to Goods supplied by Amcor (including, without limitation, as to quality, suitability or fitness for any purpose (whether or not made known to Amcor), compliance with any sample or description), whether express or implied, and however made or arising, are hereby excluded, and Amcor will have no liability of any nature to Buyer in respect thereof. Without limitation, Buyer acknowledges that no catalogue, technical schedule, price list or product literature of Amcor is deemed to constitute or contain any representation, warranty or condition relating to products, equipment or services.
- 11.2. No representation, warranty or condition is given that Goods supplied will be completely identical to, or correspond with, any sample or test material that may have been supplied.
- 11.3. Supplies will be deemed to be delivered according to specification unless a valid claim is raised in accordance with these Terms.
- 11.4. In the event that a claim by Buyer for defects in materials or workmanship is recognised and accepted by Amcor in accordance with this Agreement, Amcor may, in its sole discretion, repair, replace or give credit for the Goods (or in the case of services, re-supply or pay for the cost of re-supply of the services) supplied and established to be defective, but claims shall only be recognised if the following conditions are met:
- a. all claims must be received by Amcor within 30 days of delivery;
- b. all claims must be in writing and include the despatch number and/or invoice number;
- c. all claims must specifically identify the defect and also be accompanied by the defective item or a sample thereof; and
- d. the defect, loss or claim must not result from the act or omission of Buyer (including, without limitation, any instruction or specification provided by Buyer to Amcor).
- 11.5. If claims are not received as aforesaid, Buyer shall be conclusively deemed to have accepted the Goods and Amcor shall not incur any subsequent liability whatsoever in relation to such Goods.
- 11.6. All claims under \$250 NZD can be refused by Amcor.
- 11.7. If written notice is not given within 30 days, a claim shall be deemed to have been waived.
- 11.8. No claim shall be accepted if:
- a. any attempt to repair the defect is made by any person not authorised by Amcor to effect such repairs; or
- b. the Goods have been modified or incorrectly stored, maintained, installed or operated; or
- c. Buyer disposes of the Goods in whole or in part.
- 11.9. Amcor has the right at any time within 30 days after receipt of a complaint to inspect Goods complained of. Buyer must comply with all reasonable requests for information made by Amcor in relation to a claim.
- 11.10. If Amcor elects to repair or replace any defective Good, such repair shall be effected at such place as Amcor may specify, and Buyer shall be responsible for shipment to the place so specified.
- 12. Liability**
- 12.1. To the maximum extent permitted by law, Amcor shall not be liable for any loss of profit, loss of turnover, loss of goodwill or loss of opportunity or for any exemplary, punitive, consequential, direct, indirect or special loss, damage or injury of any kind whatsoever suffered by Buyer arising directly or indirectly from a breach of Amcor's obligations arising under or in connection with this Agreement or from any cancellation of this Agreement or from any negligence on the part of Amcor, its servants, agents or contractors, nor shall Amcor be liable for any loss, damage or injury caused to Buyer's servants, agents, contractors customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not). Buyer shall indemnify Amcor against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- 12.2. Notwithstanding anything hereinbefore contained in this clause or elsewhere in this Agreement, to the maximum extent permitted by law, the liability Amcor, whether in contract, pursuant to any cancellation of this Agreement, in tort or otherwise, in respect of all claims for loss, damage or injury arising from a breach by Amcor of its obligations arising under or in connection with this Agreement, from any cancellation of this Agreement, or from any negligence on the part of Amcor, its servants, agents or contractors, shall not in aggregate exceed the purchase price.
- 13. Default and Indemnity**
- 13.1. If Buyer defaults in due payment of any monies payable to Amcor, whether under this Agreement or otherwise, or if Buyer is in default in the performance of its obligations under this Agreement or any other contract, or if any of the events referred to in clause 7.2 have occurred, without prejudice to any other right it has at law or in equity, Amcor may, at its option, suspend or terminate this Agreement, and payment for Goods delivered and work performed up to the date of suspension or termination any other monies payable hereunder shall immediately become due and payable.
- 13.2. Despite section 109 of the PPSA and in addition to the rights contained in that section, Buyer appoints Amcor as its agent to enter upon premises where Goods are situated, to take possession of and remove the same without being responsible for any damage thereby caused, and Amcor may resell any or all of the Goods and apply the proceeds in or towards payment of the purchase price and all other monies owing to Amcor by Buyer. Buyer shall indemnify Amcor against all costs and expenses (including legal fees, transportation and storage charges) incurred by Amcor in connection with any default made by Buyer under this Agreement. Any suspension of this Agreement by Amcor shall not prevent it terminating this Agreement during the period of suspension.
- 13.3. Amcor may appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to Buyer under this Agreement. Any receiver so appointed may take possession of the Goods and resell them and otherwise exercise all rights and powers conferred on a receiver by law.
- 13.4. Buyer indemnifies Amcor against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by Amcor arising from or in connection with any breach or default by Buyer of these Terms, any related order or contract, or applicable bribery and corruption or competition / antitrust laws.
- 13.5. Buyer indemnifies and holds Amcor harmless in respect of all damages, costs, claims, expenses and liabilities whatsoever to which Buyer is subject arising directly or indirectly out of or in connection with sales made by Buyer to third parties, or any use (whether by Buyer or any other person) of Goods supplied.
- 14. Tooling and Intellectual Property**
- 14.1. Copyright in all drawings, specifications and other technical information provided by Amcor in connection with this Agreement is vested in Amcor. Without limiting the foregoing, all tooling, materials, industrial or intellectual property (including copyright in all drawings, specification and other technical information) or the like used in the preparation for or production of any Goods supplied pursuant to this Agreement will be and remain the property of Amcor or its nominee despite any contribution by Buyer, unless otherwise agreed to in writing by Amcor.
- 14.2. If any Goods are to be supplied to Buyer's design, Buyer warrants that the manufacture and supply of such Goods by Amcor will not infringe any patent, copyright, registered design or other rights of any other person and Buyer agrees to indemnify Amcor against any liability incurred by Amcor including any costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by Amcor infringes any patent, copyright or other rights of any other person.
- 14.3. Amcor may invoice Buyer for tooling purchased by Amcor and used exclusively to make product for Buyer.
- 15. Dimensions and Specifications**

- 15.1. Dimensions and specifications contained or referred to in this Agreement or in any catalogues or other publications maintained or issued by Amcor are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of this Agreement that Goods will correspond precisely with such dimensions and specifications. Customary tolerances, or in the absence of customary tolerances, reasonable tolerances, shall be allowed.
- 15.2. Buyer is responsible for testing and choice of Goods unless otherwise agreed to in writing by Amcor.
- 15.3. Buyer is responsible, before use, for carrying out appropriate testing under realistic conditions and must suspend use of Goods immediately if it observes any error.
- 15.4. Buyer must observe all storage or use conditions (if any) specified by Amcor in every respect.
- 16. Colour**
- 16.1. Should Amcor be obliged to match any shade or colour, a light and dark tolerance shall be allowed to such extent as shall be agreed upon by Amcor and Buyer and in the absence of any agreement, a reasonable tolerance shall be allowed.
- 17. Agreements and Quotations**
- 17.1. Unless otherwise stipulated by Amcor, a quotation may be withdrawn at any time by Amcor. If not withdrawn it remains open for acceptance for a maximum period of 30 days from the date of quotation and thereafter shall be deemed to be withdrawn.
- 17.2. Goods described in any quotation, or confirmation of order by Amcor, shall form part of this Agreement and such Goods will be supplied on the terms and conditions contained in this Agreement. All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded. In the case of any conflict between an order submitted by Buyer and Amcor's confirmation of order and this Agreement, Amcor's confirmation of order and terms of this Agreement shall prevail. No agent or representative of Amcor is authorised to make any representation, or to give any warranty, condition or agreement not expressly confirmed by Amcor in writing and Amcor is not in any way bound by any such unauthorised statements nor can any such statements be taken to form an Agreement or part of an Agreement with Amcor collateral to this Agreement.
- 17.3. All quotations are made and all orders for Goods are accepted by Amcor on and subject to this Agreement and any special terms and conditions which are agreed to by Amcor in writing. Unless agreed to in writing by Amcor, previous dealings between Amcor and any Buyer, or the imposition of additional or alternative terms and conditions by a Buyer, shall not vary or replace this Agreement or be deemed in any way to do so. This Agreement prevails over any terms and conditions of trade of Buyer whether or not any inconsistency arises.
- 18. Personal Property Securities Act 1999 (the "PPSA")**
- 18.1. Buyer grants to Amcor a security interest in all present and after acquired Goods and their proceeds as security for all monies payable to Amcor (whether under this Agreement or otherwise).
- 18.2. On Amcor's request, Buyer shall promptly execute any documents and do anything else required by Amcor to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the Goods. Buyer will also provide Amcor with any information that Amcor may reasonably require to complete a financing statement or financing change statement.
- 18.3. Buyer shall immediately notify Amcor in writing of any change in Buyer's name.
- 18.4. Buyer waives any right under the PPSA to receive a copy of a verification statement under the PPSA or financing change statement registered by Amcor in respect of the Goods.
- 18.5. Buyer shall pay all costs incurred by Amcor to protect or preserve its security interest or its registration, recovery or attempted recovery of outstanding monies, and the enforcement of these terms and conditions of the security interest contained in this Agreement.
- 18.6. Buyer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to this Agreement.
- 18.7. Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this Agreement.
- 18.8. Buyer will not allow a security interest to be created or registered over Goods in priority to the security interest held by Amcor.
- 19. Waiver**
- 19.1. All original rights, powers, exemptions and remedies of Amcor shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Amcor shall not be deemed to have waived any condition unless such waiver is in writing under signed by Amcor or an authorised officer thereof and any such waiver, unless the contrary is expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.
- 20. No Assignment**
- 20.1. Buyer may not assign all or any of his rights or obligations under this Agreement without the prior written consent of Amcor.
- 21. Law and Jurisdiction**
- 21.1. This Agreement shall in all respects be deemed to be an Agreement made in New Zealand and the construction, validity and performance of this Agreement shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of this Agreement is accepted and acknowledged by Buyer. Provided, however, that Amcor shall be entitled to commence any action arising out of or in respect of this Agreement in any other court.
- 22. Artwork/Design and Barcodes**
- 22.1. Amcor shall enable Buyer to review and approve any artwork or designs prepared by Amcor. If Buyer declines to undertake such review, or fails to undertake such review within the period advised by Amcor, Buyer shall be deemed to have accepted the artwork and designs and authorised Amcor to proceed with the production of Goods.
- 22.2. If Buyer requests to be present at any stage of the production process then Amcor shall advise Buyer of the time and place at which Buyer should attend. Should Buyer or its representative fail to attend, within 30 minutes of the arranged time, then Amcor may elect to either proceed or not proceed with the production of Goods. If Amcor elects to proceed with production then Buyer shall be deemed to have approved the Goods. If Amcor elects not to proceed with production then Amcor shall not be liable to Buyer or any other party for any delay in providing the Goods.
- 22.3. Preparation by Amcor of artwork and design (which terms include written text) whether printed upon any packaging material or separate label for use in conjunction with any packaging material or attachment to any Goods and sold to Buyer shall not be construed as a warranty, condition or representation expressly or by implication in any manner whatsoever that such labelling complies with any law whether by statute, regulation or otherwise in force now or which at any time in the future may be in force in New Zealand or elsewhere and containing any prescription as to the content, form, shape, size, words, letters, figures, symbols, colours, barcodes or any other labelling required upon any package or label for any Goods whatsoever.
- 22.4. Buyer's specifications should be consistent with the requirements of EAN International and any relevant industry requirements for product numbering and barcode symbol marking ("the Authority").
- 22.5. Amcor shall use all reasonable endeavours to comply with Buyer's specifications as to the product numbering or barcode symbol marking subject to and in accordance with the conditions to be fulfilled at each stage of the printing process as laid down by the Authority.
- 22.6. Amcor shall comply with industry print quality standards as to barcode reproduction.
- 22.7. Where Buyer specifies a bar code symbol that does not conform to the specifications of the Authority, Amcor supplies that bar code on the understanding that Buyer is aware of the non-conformance and exempts Amcor from any consequence of the non-conformance.
- 23. Plates, Dies, Blocks, Screens, Original Designs and Artwork**
- 23.1. Unless otherwise agreed in writing between Amcor and Buyer, printing plates, moulds, blocks, rubber stereotypes, cutting dies artwork, screens and other preparatory work may be automatically destroyed if they have not been used for a period of two (2) years.
- 24. CGA**
- 24.1. The parties acknowledge and agree that:
- the Goods are being supplied and acquired in trade; and
  - all parties to these conditions are in trade and agree to contract out of the provisions of the CGA; and
  - it is fair and reasonable that the parties are bound by this clause 24.1 and accordingly:
    - the conditions, warranties and guarantees set out in the CGA shall not apply to and are excluded from the acquisition of Goods by Buyer; and
    - Buyer may not claim any of the remedies set out in the CGA from Amcor.
- 24.2. Buyer agrees that if it is acquiring Goods for the purpose of resupply in trade, or for personal, domestic or household use, then Buyer will:
- if resupplying the Goods in trade, when the acquirer acquires, or holds itself out as acquiring the Goods in trade, procure that Buyer's written terms and conditions for such resupply require that Buyer's client and each person in the distribution chain include in their supply agreements an acknowledgement in writing that:
    - the acquirer is in trade;
    - the Goods are being acquired in trade;
    - the acquirer agrees to contract out of the CGA and that it is fair and reasonable to do so; and
    - excluding the provisions of the CGA from any such acquisition;
  - if resupplying Goods directly to a consumer within the meaning of the CGA who is acquiring or holding itself out as acquiring the Goods in trade supply the Goods pursuant to written terms and conditions which acknowledge that:
    - the consumer is in trade;
    - the Goods are being acquired in trade;
    - the consumer agrees to contract out of the CGA and that it is fair and reasonable to do so; and
    - excluding the provisions of the CGA from any such acquisition.
- 24.3. If Buyer is a consumer as that term is defined in section 2 of the CGA and Buyer has not contracted out of the CGA under clause 24.1 of these terms and conditions, nothing will limit any rights Buyer may have under the CGA.
- 25. Purchase Order Acceptance and Forecasts**

- 25.1. All orders by Buyer are made subject to these Terms (and any specific terms set out in an Order Confirmation) alone, which together exclude and override any other oral or written representations, terms and conditions inconsistent with them which Customer may seek to impose.
- 25.2. Any quotation made by Amcor in respect of a supply is for information only and shall not constitute a firm offer. Orders are only binding when a written Order Confirmation is sent by Amcor to Customer. Amcor's sales representative are not authorised to make any representation or promise on Amcor's behalf save in so far as set out in an Order Confirmation. If Customer makes any additions to or alterations to an order placed with Amcor, Amcor will be entitled to reject such addition or alteration or to cancel the order.
- 25.3. Amcor will only accept purchase orders which are accompanied by the purchase order number. Amcor reserves the right to refuse acceptance of any purchase order(s) within two (2) working days after receipt. Any quotation provided by Amcor lapses if not accepted by Buyer within 30 days of receipt.
- 25.4. If Buyer has provided Amcor with a forecast of future requirements, it acknowledges that Amcor will be entitled to rely on the accuracy of such forecast.
- 25.5. If Buyer provides Amcor with forecasts that are materially inaccurate, Amcor is entitled to invoice Buyer for all costs, expenses or losses which result from Amcor having relied on an inaccurate forecast.
- 26. Force Majeure**
- 26.1. Amcor will not be in default or breach of these Terms or any related order or contract, and will not be liable to Buyer, for any delay or failure to perform arising from or due to an event of Force Majeure. Amcor reserves the right to terminate an arrangement in whole or in part or to postpone delivery by a reasonable period if performance of its obligations is prevented or impaired by an event of Force Majeure. An "event of Force Majeure" means an event or cause beyond the reasonable control or influence of Amcor and includes, without limitation any labour dispute, blockade, strike, lock out, shortage of labour, industrial action; an act of God, natural disaster, lightning, storm, gale, landslide, bush fire, climatic condition or earthquake; accident, explosion, flood, fire, damage by water, operating breakdown; act of public enemy, political unrest, civil commotion, riot, war, terrorism or sabotage; the effect of any applicable law, order, official directive, rule or regulations of any government or other competent authority; environmental contamination; trade sanction, embargo, inability to obtain any essential equipment or materials, delay by suppliers, restricted supply of electrical power or materials, water shortage, lack of transportation.
- 26.2. If Amcor terminates an arrangement pursuant to clause 26.1 Amcor shall refund any payment which Buyer has already made on account of the price (subject to deduction of any amount Amcor is entitled to claim from Customer) but will not be liable to compensate Buyer for any further loss or damage caused by the termination or any failure to deliver arising out of it.
- 27. Interpretation**
- 27.1. These conditions of sale are entered into on behalf of and are intended to bind and ensure to the benefit of Amcor and Amcor's successors and assigns.
- 27.2. In these conditions:
- a. "person" includes a corporation, association, firm, company, partnership or individual.
  - b. "CGA" means the *Consumer Guarantees Act 1993* (New Zealand) as amended from time to time;
  - c. "the date of the Agreement" means:
    - i. where the Agreement arises from an order placed by Buyer, the date of acceptance of the order by Amcor; or
    - ii. where the Agreement arises from a quotation given by Amcor, the date upon which written notification of acceptance of the quotation is received by Amcor;
  - d. "the purchase price" means the purchase price of Goods as agreed between Amcor and Buyer, subject to any variation in accordance with clauses 1 or 2 hereof.
- 28. Privacy Act 1993**
- 28.1. Buyer authorises Amcor to contact any credit agency, referee or any other source ("Source") in order to check, exchange or provide information in relation to Buyer and Buyer authorises each Source to provide to Amcor any information about Buyer. If Buyer is a natural person, the *Privacy Act 1993* (New Zealand) entitles Buyer to have access to personal information held by Amcor about Buyer and to request correction of that personal information.
- 29. Acknowledgement**
- 29.1. Buyer acknowledges that it has received a copy of this Agreement, that this Agreement constitutes a "security agreement" for the purposes of the PPSA, and that Amcor may register a financing statement in respect of this Agreement.
- 30. Vienna Convention**
- 30.1. Buyer and Amcor agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 31. Confidentiality**
- 31.1. All information relating to, or contained in, a quotation, purchase order, Order Confirmation or invoice ("Confidential Information") is subject to a duty of confidence and must not be disclosed to any person unless the disclosure is permitted by clause 31.2.
- 31.2. A party may disclose Confidential Information:
- i) to those of its employees, related bodies corporate, legal advisors, agents, consultants and contractors who may reasonably require the information, including to perform these Terms;
  - ii) with the consent of the other party;
  - iii) where a party can prove that information was in its possession before disclosure to it by the other party (and not subject to obligations of confidence between the parties) or was independently developed;
  - iv) to the extent required to enforce these Terms or for proceedings arising out of or in connection with these Terms; or
  - v) to the extent required by law, competent regulatory authority or court order.
- 32. Severability**
- 32.1. If any provision of these Terms is or shall become void in whole or in part the other provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these Terms.
- 32.2. Any part of these Terms, being a whole or part of a clause, shall be capable of severance without effecting any other part of these Terms.

