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## VP PACKAGING LIMITED TERMS AND CONDITIONS OF SALE

### 1 Definitions and Interpretation

#### 1.1 Definitions:

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>"Collection Location"</b>	the location where the Customer will collect the Goods from VP as set out in the Order; if this is not specified it will be confirmed via the order confirmation.
<b>"Conditions"</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6;
<b>"Contract"</b>	the contract between VP and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
<b>"Customer"</b>	the person or firm who purchases the Goods from VP;
<b>"Delivery Location"</b>	has the meaning given in clause 5.2;
<b>"Delivery Terms"</b>	has the meaning given in clause 5.2;
<b>"Force Majeure Event"</b>	an event, circumstance or cause beyond a party's reasonable control;
<b>"Goods"</b>	the goods (or any part of them) set out in the Order;
<b>"Insolvency Event"</b>	the other party: (a) enters into liquidation or a winding up petition is presented against the company or a resolution is passed for the voluntary winding up of the company; (b) enters into administration or any steps are taken to place the company into administration such as the filing at court of a an administration application or a notice of intention to place the company into administration; (c) proposes to make any voluntary arrangements with its creditors; (d) has a receiver, liquidator, administrator, nominee, supervisor, trustee or an individual with a similar role appointed over any of its assets; or (e) suffers an event which, under the law of a different country, is equivalent to any of the previously specified acts or events;
<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>"Order"</b>	the document or documents issued and delivered by the Customer to VP specifying, amongst among other things, the Goods being purchased (including any technical details, specifications or plans), the price, quantities, and Delivery Terms;
<b>"Specification"</b>	any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and VP;



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**"VP"** VP Packaging Limited (registered in England and Wales with company number 01795334 and registered address 2200 Kettering Parkway, Kettering Venture Park, Kettering, Northamptonshire, NN15 6XR; and

**"Warranty Period"** has the meaning given in clause 4.1.

- 1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to **"writing"** or **"written"** includes email but not fax.

## **2 Basis of Contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when VP issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by VP and any descriptions or illustrations contained in VP's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by VP shall not constitute an offer. A quotation shall only be valid for a period of 14 days from its date of issue.

## **3 Goods**

- 3.1 The description of the Goods will be as specified in the description or Specification agreed at the time of the Order.
- 3.2 VP reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and VP shall notify the Customer in any such event.

## **4 Quality**

- 4.1 VP warrants that on delivery, and for a period of 3 months from the date of delivery (**"Warranty Period"**), the Goods shall be free from material defects in design, material and workmanship.



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- 4.2 Subject to clause 4.5, if:
- 4.2.1 the Customer gives notice in writing to VP during the Warranty Period within 3 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
  - 4.2.2 VP is given a reasonable opportunity of examining such Goods; and
  - 4.2.3 the Customer (if asked to do so by VP) returns such Goods to VP's place of business (at its own cost),
- VP shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Customer acknowledges and agrees that measurements of the Goods are estimates only and due to the nature of the Goods there may be variations in the weight, colour, or quantity of the Goods. The Goods will be provided in the below variations:
- 4.3.1 grammage have an agreed variation of 7%;
  - 4.3.2 synthetic foils have an agreed variation of 12%;
  - 4.3.3 measurements under 100mm have an agreed variation of 6% (but no more than 10mm); and
  - 4.3.4 measurements above 201mm have an agreed variation of 2.5% (but no more than 10mm).
- 4.4 The Customer acknowledges and agrees that due to technical reasons there may be variances in the size of print, the colour of the Goods and chromaticity of the raw materials that go into the Goods.
- 4.5 VP shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:
- 4.5.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - 4.5.2 the defect arises because the Customer failed to follow VP's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 4.5.3 the defect arises as a result of VP following any drawing, design or specification supplied by the Customer;
  - 4.5.4 the Customer alters or repairs such Goods without the written consent of VP;
  - 4.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 4.5.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.6 Except as provided in this clause 5, VP shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 4.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 4.8 These Conditions shall apply to any repaired or replacement Goods supplied by VP.



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## 5 Delivery

- 5.1 VP shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, any relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 VP shall deliver the Goods Ex Works (Incoterms 2020) to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after VP notifies the Customer that the Goods are ready unless otherwise agreed in the Order (the "**Delivery Terms**").
- 5.3 Where the Customer is collecting the Goods from the Collection Location, the Customer shall collect the Goods specified in each Order from the Collection Location on the date agreed between the parties.
- 5.4 The Customer shall notify VP within 3 Business Days of the Delivery Date if it becomes aware that the Goods do not comply with the Order. After that time the Customer is deemed to have confirmed the Goods fully comply with the Order.
- 5.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. VP shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide VP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If VP fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. VP shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide VP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.7 If the Customer fails to accept delivery of the Goods, or collect the Goods within 3 Business Days of VP notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or VP's failure to comply with its obligations under the Contract in respect of the Goods:
- 5.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which VP notified the Customer that the Goods were ready; and
- 5.7.2 VP shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.8 VP may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 6 Title and Risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until VP receives payment in full for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as VP's property;



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- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 6.3.4 notify VP immediately if it becomes subject to an Insolvency Event; and
  - 6.3.5 give VP such information as VP may reasonably require from time to time relating to:
    - 6.3.5.1 the Goods; and
    - 6.3.5.2 the ongoing financial position of the Customer.
  - 6.4 At any time before title to the Goods passes to the Customer, VP may:
    - 6.4.1 prohibit the Customer from reselling the Goods or using them in the ordinary course of its business; and
    - 6.4.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7 Price and Payment**

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in VP's published price list in force as at the date of delivery.
- 7.2 VP may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 7.2.1 any factor beyond VP's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give VP adequate or accurate information or instructions.
- 7.3 The price of the Goods:
  - 7.3.1 excludes amounts in respect of value added tax ("VAT"), which the Customer shall additionally be liable to pay to VP at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - 7.3.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 VP may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by VP:
  - 7.5.1 within 14 days of the date of the invoice or in accordance with any credit terms agreed by VP and confirmed in writing to the Customer; and
  - 7.5.2 in full and in cleared funds to a bank account nominated in writing by VP, and



time for payment shall be of the essence of the Contract.

- 7.6 If the Customer fails to make a payment due to VP under the Contract by the due date, then, without limiting VP's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8 Limitation of Liability**

- 8.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.1.1 death or personal injury caused by negligence;
  - 8.1.2 fraud or fraudulent misrepresentation;
  - 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
  - 8.1.4 defective products under the Consumer Protection Act 1987.
- 8.2 Subject to clause 8.1, VP's total liability to the Customer under each Order, howsoever arising, whether under contract, breach of statutory duty, restitution, indemnity or tort (including negligence) or otherwise shall in no circumstances exceed the price stated on any relevant Order.
- 8.3 Subject to clause 8.1, VP shall in no circumstances be liable for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, defect in design and/or indirect or consequential loss.
- 8.4 This clause 8 shall survive termination of the Contract.

## **9 Intellectual Property Rights**

- 9.1 All Intellectual Property Rights arising out of or in connection with the Goods shall belong to VP or its third party licensors (as the case may be). Each party retains all Intellectual Property Rights in any Specification that it has produced, along with all rights to reuse such Specifications in the future.
- 9.2 No right or licence is granted to the Customer in respect of the Intellectual Property Rights of VP, except the right to use, or re-sell the Goods in the Customer's ordinary course of business.
- 9.3 The Customer grants VP a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to VP for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.4 To the extent that the Goods are to be manufactured in accordance with a description or Specification supplied by the Customer, the Customer shall indemnify VP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by VP in connection with any claim made against VP for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with VP's use of the description or Specification. This clause 9 shall survive termination of the Contract.



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## 10 Termination

- 10.1 Without limiting its other rights or remedies, VP may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so; or
  - 10.1.2 one or more of the following applies to the Customer: (a) it ceases to trade; (b) it is unable to pay its debts; or (c) it suffers an Insolvency Event.
- 10.2 Without limiting its other rights or remedies, VP may suspend provision of the Goods under the Contract or any other contract between the Customer and VP if the Customer becomes subject to an Insolvency Event to clause 10.1.2, or VP reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, VP may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to VP all of VP's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, VP shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5 Termination of the Contract, however arising, 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 which existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 11 Force Majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 30 days', the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 12 General

### 12.1 Confidentiality

- 12.1.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.1.2.
- 12.1.2 Each party may disclose the other party's confidential information:
- 12.1.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.1; and
  - 12.1.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.





12.1.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 12.2 Notices

12.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

12.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.2.1.2 sent by email to the email address notified by each party in writing, or such other addresses as the parties may agree from time to time.

12.2.2 Any notice shall be deemed to have been received:

12.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

12.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

12.2.2.3 if sent by email, at 9.00am on the next Business Day after transmission.

12.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.3 **Assignment and other dealings.** The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without VP's prior written consent.

12.4 **Entire Agreement.** The Contract (and the documents referred to within it) contains all the terms which the parties have agreed with respect to its subject matter and supersedes all previous agreements and understandings between the parties (whether oral or in writing) relating to such subject matter. Each party acknowledges and agrees that it has not been induced to enter into the Contract by a statement or promise which it does not contain or is not contained in a document referenced within it. All warranties, conditions and other terms (whether express or implied) that are not set out in the Contract are (to the fullest extent permitted by law) excluded from the Contract.

12.5 **Third Party Rights.** A person who is not a party to the Contract shall not have any rights to enforce any term of the Contract.

12.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

12.7 **Waiver.** A waiver of any rights or remedies under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

12.8 **Severability.** If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted.

12.9 **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Save that claims may be brought in any competent jurisdiction for (i) injunctive relief





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and (ii) claims relating to intellectual property or for breaches of confidentiality obligations, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.