



Terms and Conditions

These terms and conditions apply (unless otherwise previously agreed in writing) to the supply of Goods by Packline Solutions to a Customer from time to time. Any supply of Goods by Packline Solutions to the Customer made after the date of acceptance of these terms is a supply pursuant to the Agreement as defined and any such supply does not give rise to a new or separate agreement.

1. Definitions and Interpretation

1.1. In this Agreement:

Agreement means the agreement between the Customer and Packline Solutions comprising the following documents:

- (a) the Order, accepted by Packline Solutions;
- (b) these Terms and Conditions of Sale; and
- (c) any other document which is incorporated by reference in the Quotation or these terms and conditions of sale.

Australian Consumer Law has the meaning given to it in the *Competition and Consumer Act 2010 (Cth)*.

Business Day means any day other than a Saturday, Sunday or public holiday in the whole State of South Australia.

Customer means the party to whom a Quotation is provided by Packline Solutions or by whom an Order is placed is placed with Packline Solutions for Goods.

Delivery Time means the date and time that the Goods are:

- (a) delivered by, or on behalf of, Packline Solutions to the Site or any other delivery location nominated by the Customer and agreed to by Packline Solutions; or
- (b) collected by, or on behalf of, the Customer or notified as being ready for collection from Packline Solutions' premises or any other location at which the Goods are situated; or
- (c) due to be delivered by Packline Solutions, but delivery is delayed at the request of the Customer or due to circumstances beyond the reasonable control of Packline Solutions.

Force Majeure Event means any event outside the reasonable control of Packline Solutions including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

Goods mean any product, item, equipment or materials sold or to be sold by to the Customer and includes any services provided by Packline Solutions to Customer.

GST means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Packline Solutions means *Pack-Line Solutions Pty Ltd - ABN 62 623 371 184*.

Invoice means the written invoice issued by Packline Solutions to the Customer upon acceptance of an Order setting out the Price and any delivery charges.

Order means a written order to purchase Goods placed by the Customer with Packline Solutions in such form as required by Packline Solutions.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Price means the Price of Goods determined under clause 3.

Quotation means a written quotation issued by Packline Solutions for the sale of Goods to the Customer.

Site means the location where the Goods are to be delivered, as stated in the Quotation or otherwise nominated by the Customer and agreed to by Packline Solutions.

Standard Specifications means Packline Solutions' standard specification for the Goods current at the time Goods are delivered to the Customer. Copies of the Standard Specifications are available upon request from Packline Solutions.

1.2. In this Agreement:

- (a) any reference to a party includes its successors and permitted assigns;
- (b) headings are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) "including" and similar words do not imply any limitation;
- (e) a reference to \$ is to the Australian dollar;
- (f) a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) if the performance of an obligation under this Agreement falls due on a weekend or public holiday day it must be performed on the next Business Day.

2. Quotations and Orders

2.1. Quotations are valid for a period of 30 days from date of issue and may be amended or withdrawn at any time by Packline Solutions before an Order is placed by the Customer.

2.2. An order given to Packline Solutions is binding on Packline Solutions and the Customer, if:

- (a) a written acceptance is signed for or on behalf of Packline Solutions; or
- (b) the Goods are supplied by Packline Solutions in accordance with the Order.

2.3. Once accepted by Packline Solutions an Order constitutes a contract between Packline Solutions and the Customer on the terms and conditions contained in this Agreement and the terms of the Agreement will override any conditions contained in the Customer's Order.

2.4. Once accepted by Packline Solutions, orders cannot be cancelled by the Customer under any circumstances without Packline Solutions' prior written consent which it may refuse in its absolute discretion (which consent may include a requirement that the Customer indemnify Packline Solutions against any loss or expense suffered by it as a result of the cancelled Order).

3. Price

3.1. The Price for Goods is either;

- (a) the price indicated in Packline Solutions' Quotation (or any subsequent Quotation if varied); or
- (b) the price listed in any Packline Solutions price list current at the date an Order is placed.

3.2. Prices do not include applicable taxes or statutory charges (such as GST) or delivery charges. Delivery charges will be specified in Quotations and Invoices and charged in addition to the Price.

4. Payment

4.1. Packline Solutions, at its discretion, may require payment of a deposit for Goods on placing of an Order. Packline Solutions may also require that the Goods be paid for in instalments by the Customer.

4.2. Unless the Customer has a credit account in the Customer's name with Packline Solutions, the total amount of an invoice (less any deposit paid) and the delivery charges are payable by the Customer prior to or on delivery of the Goods.

4.3. If the Customer has an approved credit account, an invoice (less any deposit paid) and the delivery charges are payable by the Customer by the 28th day of the month following the invoice date or by the due date stated on the invoice as agreed by the Customer and Packline Solutions.

- 4.4. Payment must be made by cash, bank cheque, credit card (which may include provider surcharge), direct credit into Packline Solutions' bank account or by any other method agreed between the Customer and Packline Solutions. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared or recognised.
- 4.5. Subject to clause 7, payment will constitute acceptance by the Customer of all Goods.
- 4.6. All amounts payable by the Customer under this Agreement must be paid without set-off or counter claim of any kind.

5. GST

- 5.1. If GST is imposed on any taxable supply under this Agreement, then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.

6. Delivery

- 6.1. Packline Solutions will (unless otherwise agreed with the Customer) organise for delivery of the Goods to the Site by a carrier appointed by Packline Solutions. Delivery and freight costs will be specified in the Quotation and are payable by the Customer at the same time an invoice or application for payment is payable.
- 6.2. An estimated timeframe for delivery will be stated in the Quotation. Packline Solutions will use reasonable endeavours to meet the delivery timeframe but accepts no responsibility for costs or charges resulting from a delay in delivery due to factors outside its reasonable control. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Packline Solutions may change the estimated delivery time by written notice to the Customer. Packline Solutions reserves the right to deliver the Goods in instalments.
- 6.3. The Customer acknowledges that Goods do not need to be signed for when delivered and may be unloaded and left on any part of the Site that Packline Solutions or its carrier considers reasonable in the circumstances.

7. Defects and Returns

- 7.1. The Customer must inspect the Goods on delivery and notify Packline Solutions in writing within 7 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 7 days of delivery, the Customer will be deemed to have accepted the Goods.
- 7.2. If a notice of defect or damage is given the Customer must allow Packline Solutions access to inspect the Goods and determine whether or not that notice is valid. If Packline Solutions accepts that Goods are defective or damaged the parties acknowledge that the Customer has remedies available to it as a consumer under the Australian Consumer Law.
- 7.3. Packline Solutions will not be liable for any defects, damage or failure of Goods which have not been stored or used in a proper manner.
- 7.4. Packline Solutions may, at its sole discretion, accept the return of non-defective Goods for credit subject to a handling fee of 15% of the value of the returned Goods plus freight costs.
- 7.5. Goods will not be accepted for return in any circumstances (including any custom made, proceed or acquired Goods) other than those specified in this clause 7 or required by law.

8. Risk

- 8.1. Risk in the Goods passes to the Customer at the Delivery Time.
- 8.2. The Customer must, from the date risk in the Goods passes to it until the date that title to the Goods passes to it, insure the Goods against all reasonably insurable risks for their full replacement value and, if required by Packline Solutions, store the Goods separately from any other goods and in a way, that enables the Goods to be clearly identifiable as the property of Packline Solutions.

9. Retention of Title

- 9.1. Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Packline Solutions until payment in full for the Goods and all sums due and owing by the Customer to Packline Solutions on any account has been made. Until the date of payment:
 - (a) the Customer has the right to sell the Goods in the ordinary course of business;
 - (b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Packline Solutions;
 - (c) the Goods are always at the risk of the Customer.
- 9.2. The Customer is deemed to be in default immediately upon the happening of any of the following events:
 - (a) if any payment to Packline Solutions is not made promptly before the due date for payment;
 - (b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Packline Solutions is dishonoured;
- 9.3. In the event of a default by the Customer, then without prejudice to any other rights which Packline Solutions may have at law or under this agreement:
 - (a) Packline Solutions or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
 - (b) Packline Solutions may recover and resell the Goods;
 - (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Packline Solutions may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Packline Solutions and the Customer may be ascertained. Packline Solutions must promptly return to the Customer any goods the property of the Customer and Packline Solutions is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
 - (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Packline Solutions. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Packline Solutions at the time of the receipt of such proceeds. The Customer will pay Packline Solutions such funds held in trust upon the demand of Packline Solutions.
- 9.4. Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral as original collateral, or any of it, in favour of the Packline Solutions

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1. Capitalised terms used in this clause but not defined in clause 1 the meanings given to them in the PPSA.
- 10.2. The Customer acknowledges and agrees that;
 - (a) this Agreement constitutes a Security Agreement in respect of the Goods;
 - (b) the Goods are Collateral for the purpose of the PPSA;
 - (c) Packline Solutions holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by Packline Solutions to the Customer and any Proceeds of the sale of those Goods;
 - (d) that any purchase by the Customer on credit terms from Packline Solutions or retention of title under clause 9 will constitute a Purchase Money Security Interest;
 - (e) the Purchase Money Security Interest granted will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
 - (f) Packline Solutions will continue to hold a Security Interest in the Goods in accordance with, and subject to, the PPSA, notwithstanding that the Goods may be processed, co-mingled or become an accession with other goods.
 - (g) any Packline Solutions' Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
 - (h) until title in the Goods passes to the Customer, it will keep all Goods supplied by Packline Solutions free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of Packline Solutions under this Agreement or the PPSA; and
 - (i) in addition to any other rights under this Agreement or otherwise arising, Packline Solutions may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA, including entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those Goods over which Packline Solutions holds a Security Interest.
- 10.3. The Customer undertakes to:
 - (a) sign any further documents and provide such information which Packline Solutions may reasonably require to register, amend or update a Financing Statement or a Financing Change Statement in relation to a Security Interest on the Personal Securities Register;

- (b) indemnify, and on demand reimburse, Packline Solutions for all expense incurred in registering a Finance Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Security Interests;
 - (c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Packline Solutions; and
 - (d) provide Packline Solutions not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or other change in the Customer's details registered on the Personal Property Securities Register to enable Packline Solutions to register a Financing Change Statement if required.
- 10.4. Packline Solutions and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.
- 10.5. The Customer waives its rights:
- (a) to receive notices under sections 95, 118 121(4), 130, 132(3)(d) and 132(4) of the PPSA; and
 - (b) as a Grantor and / or a Debtor under sections 142 and 143 of the PPSA; and
 - (c) to receive a Verification Statement in accordance with section 157 of the PPSA.
- 10.6. The Customer must unconditionally ratify any actions taken by Packline Solutions under this clause 10.
- 10.7. The Customer appoints and authorises Packline Solutions to be its attorney to sign in the Customer's name all documents which Packline Solutions reasonably considers necessary to protect, preserve and enforce its rights and powers under this Agreement and the PPSA.

11. Default and termination

- 11.1. In relation to any Invoice that has not been paid by the due date:
- (a) default interest will accrue daily at the rate of 2% per calendar month; and
 - (b) the Customer agrees to indemnify Packline Solutions from and against all costs and disbursements incurred by Packline Solutions in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).
- 11.2. In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by Packline Solutions.
- 11.3. If the Customer:
- (a) is in default of any payment obligation;
 - (b) fails to remedy a breach of any non-payment related obligation within 14 days of having been given a written notice to remedy the breach by Packline Solutions;
 - (c) becomes unable to pay its debts and when they fall due; or
 - (d) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up;
- then Packline Solutions may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer:
- (e) suspend further supply of the Goods and require payment in advance for any future supply;
 - (f) recover possession of any Goods for which payment has not been made;
 - (g) terminate all or any Orders which have been accepted by Packline Solutions;
 - (h) claim immediate payment of all moneys due by the Customer in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
 - (i) continue to enforce its rights against and recover from the Customer such payments and any other amounts owing as and when they fall due.

12. Warranties and limitation of liability

- 12.1. Packline Solutions warrants that the Goods When delivered to the Customer will comply with any description for the Goods contained in the Quotation and with the Standard Specification (if any) for the Goods.
- 12.2. Unless expressly provided in the Quotation or any other written document of Packline Solutions', Packline Solutions gives no representations or warranties for the Goods.
- 12.3. The Customer warrants that in placing its Order it has:
- (a) satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and
 - (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided of given by Packline Solutions or anyone on Packline Solutions' behalf in respect of the Goods, other than those expressly contained in this Agreement, the Quotation or any other document that Packline Solutions has provided to the Customer.
- 12.4. Where the customer buys Goods as a consumer, this Agreement is subject to the Australian Consumer Law which governs the rights of consumers and nothing in this Agreement affects the Customer's statutory rights.
- 12.5. Packline Solutions' liability to the Customer is limited, to the extent permissible by law, and at Packline Solutions' option:
- (a) in relation to the Goods;
 - i. the replacement of the products or the supply of equivalent products
 - ii. the repair of the products
 - iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
 - iv. The payment of the cost of having the products repaired
 - (b) Where the Goods are services:
 - i. the supply of service again; or
 - ii. the payment of the cost of having the services supplied again.
- 12.6. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Packline Solutions is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Packline Solutions' failure to complete or delay in completing the order to deliver the Goods.

13. Indemnity

- 13.1. The Customer agrees to indemnify and keep indemnified Packline Solutions against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and consequential loss (including loss of profit)), suffered or incurred by, or made against Packline Solutions as a result of a breach of this Agreement by the Customer, the Customer's use of the Goods, or any other conduct of the Customer, except where those costs, claims, demands, expenses or liabilities are directly and solely attributable to the gross negligence or wilful default of Packline Solutions or any of its duly authorised employees or agents.

14. Force Majeure

- 14.1. Packline Solutions will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 14.2. If a Force Majeure Event arises, Packline Solutions will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on Packline Solutions' performance under this Agreement. If the Force Majeure Event affects the capacity of Packline Solutions to complete its material obligations under this Agreement in a timely manner, Packline Solutions may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

15. Confidentiality

- 15.1. The Customer shall treat as confidential all information, data, drawings, specifications, samples and documentation supplied by Packline Solutions under or in connection with this Agreement, and will not disclose them to any third party without the prior written consent of Packline Solutions.

16. Dispute Resolution

- 16.1. If there is a dispute in relation to any aspect of the supply of the Goods either party may notify the other in writing of the dispute.
- 16.2. Following any such notification, there will be a period of 30 days during which both parties must participate in good faith in any negotiations or discussions regarding the dispute which Packline Solutions requests the Customer to participate in.
- 16.3. If the dispute has not been resolved by the end of the 30 day period, Packline Solutions may require that the dispute be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia and its applicable rules.
- 16.4. Subject to clause 16.5 neither party is permitted to commence any court proceedings or other similar actions relating to a dispute unless it has complied with the procedure set out in this clause.
- 16.5. This clause does not prevent a party from exercising any rights it has under the Construction Act or from commencing legal proceedings for urgent interlocutory relief.

17. General provisions

- 17.1. The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Packline Solutions.
- 17.2. Packline Solutions may assign or deal with any of its rights or obligations under this Agreement at any time and without any requirement to notify the Customer. Packline Solutions reserves the right to subcontract the performance of any of its obligations under this Agreement to any other person it so determines.
- 17.3. Packline Solutions may vary this Agreement from time to time and any variation takes effect in relation to subsequent Orders placed after the Customer has received written notice of the variation from Packline Solutions.
- 17.4. No failure to exercise or delay in exercising any right under this Agreement constitutes a waiver and any right may be exercised in the future. A waiver of any right under this Agreement must be in writing and is only effective to the extent set out in that written waiver.
- 17.5. If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the relevant sub-clause is to be severed from this Agreement and if this cannot be done, then the entire relevant clause is to be severed from this Agreement, in each case, without affecting the validity or enforceability of the remaining provisions.
- 17.6. This Agreement (including the Quotation, Order and Invoice) constitutes the entire Agreement between the parties in respect of the sale of Goods and supersedes all previous communications, representations understandings or agreements.
- 17.7. This Agreement is governed by the laws in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of State of Victoria.
- 17.8. Any notice to be given to a party must be in writing.
- 17.9. Clauses 5, 7, 9, 10, 12, 13, 15 and 16 survive termination or completion of this Agreement.
- 17.10. Any intellectual property rights in the Goods and any instructions relating to them remain with Packline Solutions and do not pass to the Customer. Packline Solutions grants to the Customer a non-exclusive, royalty free license to use Packline Solutions' intellectual property to the extent such materials form part of, or are integral to, the Goods.