



STANDARD TERMS AND CONDITIONS

1. Meanings

In these terms:

Australian Consumer Law means Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth).

business day means a day which is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising (including in contract, negligence or statute) and whether present, unascertained, immediate, future, or contingent.

contract means any contract for a supply from us to you;

Corporations Act means *Corporations Act 2001* (Cth);

holding period means the period (if any) we agree to hold goods for you after the completion of the manufacture of the goods or the arrival of sourced goods to our premises, being (a) as set out in a quote, or (b) if not set out in a quote, a period of 3 months from the completion of manufacture or arrival of the goods to our premises.

insolvency event means a person (a) becomes a *Chapter 5 body corporate*, (b) becomes an *insolvent under administration* or has steps taken against them to make them an *insolvent under administration*, (c) has a *controller* appointed over any of its property, (d) has a resolution passed for its winding up or liquidation, (e) cannot pay its debts as and when they fall due, (f) has proceedings brought against it under any bankruptcy or insolvency law and such proceedings are not discharged or stayed within 15 days, or (g) causes or is subject to any event that has analogous effect to any of the above (words italicized in this section have the meaning given in section 9 of the Corporations Act).

liabilities or **liability** means a claim, losses, damages, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable;

month means a calendar month;

non-standard goods means (a) goods manufactured or sourced by us to your own particular specifications that are not goods readily available 'off the shelf', and/or (b) goods which are readily available 'off the shelf' but which are to be printed with your artwork, designs and/or logos;

notice means written notice by post, facsimile or email;

PPSA means *Personal Properties Securities Act 2009* (Cth);

quote means any written quote or written offer from us to you (including our document entitled 'Product Supply Agreement');

supply means our provision of services (including designing and manufacturing goods and warehousing) and/or goods to you; and

we or **us** means O.E. & D.R. Pope Pty Ltd (ACN 007 645 810) trading as Pope Packaging.

2. Interpretation

In these terms:

2.1 a reference to "\$" or "dollars" is to Australian dollars;

2.2 singular includes plural and vice versa;

2.3 reference to a person includes a corporation and partnership and vice versa;

2.4 headings do not affect interpretation;

2.5 no rule of construction applies to the disadvantage of a party because that party put forward a contract or any portion of it;

2.6 if any part of a contract would be unenforceable, the provision must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the contract.

3. Application

3.1 A contract is formed if you accept a quote in writing or by email, you accept a supply from us, or we otherwise form an agreement with you to make a supply (including by accepting an order from you). These terms:

(a) apply to each contract;

(b) together with our quote or your order (if any) are the sole terms of each contract;

(c) do not apply to a contract to the extent they are inconsistent with an applicable quote; and

(d) prevail over any terms put out by you including in any order unless we expressly agree in writing.

3.2 None of our employees, agents or contractors may vary or add to these terms without the prior written authority of our general manager or a director.

- 3.3 Except as required by the mandatory operation of law, all implied terms and conditions are excluded.
- 3.4 If you enter into a contract as a trustee, you agree that you enter into the contract in both your own capacity and as trustee of the trust.

4. Services and Goods

- 4.1 We may alter the range of services or goods we offer without notice to you.
- 4.2 If we agree to supply goods which subsequently are not readily available, we may use substitute goods so long as the same are of the same functionality as the ordered goods and are also of equal or better quality than the ordered goods.

5. Quotes and Orders

- 5.1 An order you give us is subject to our acceptance and we may decline an order. You may not cancel a contract, or delay delivery unless we agree in writing.
- 5.2 Quotes are valid for the period specified in a quote unless withdrawn or varied by us by notice prior to our receipt of your notice of acceptance. Where a quote does not specify a validity period for the quote then the quote will be valid for a period of 2 days.

6. Prices

- 6.1 Unless stated otherwise, total prices quoted are exclusive of GST, design services and delivery charges.
- 6.2 If we have provided a quote our invoices will be calculated in accordance with the quote. For a supply provided without a quote, or outside the scope of a quote, invoices will be prepared based on our then current pricing for like goods or services.

7. Price Adjustment

- 7.1 If a quote is prepared on incomplete, misleading, or incorrect information provided by you we may require you to pay us an additional amount (being the difference between the quoted price and what we would have quoted had the information supplied been accurate and complete).
- 7.2 We may increase our price (even if we have given a fixed price) to compensate us for any loss, expense, or increased costs we incur in making that supply, as a result of any of the following:
- (a) we are delayed for any reason beyond our direct and reasonable control from starting the supply on the date stated in the quote or if not so stated within 30 days of the contract being formed, and, acting reasonably, we determined the same results in a material increase in the price of raw materials or goods we require to make the supply over the price of the same as at the date of our quote;
 - (b) you request and we agree to any change to the specifications of the goods set out in the contract;
 - (c) we agree to a request by you to make an additional supply or to vary the supply;
 - (d) if, acting reasonably, we determine there has been a material increase in the price of raw materials or goods we require to make the supply over the price of the same as at the date of our quote (including because the value of the Australian dollar falls against the value of a foreign currency which is applicable to our purchase of such raw materials or goods); and/or
 - (e) any breach by you of your obligations under the contract including these terms,
- 7.3 In addition, if we have not given you a fixed price, we may increase the price by reason of any variation in the costs of our labour and/or materials. We will use reasonable endeavours to notify you as soon as reasonably practicable if we increase the price in accordance with this clause 7.3.
- 7.4 If the supply is subject to any tax, duty levy or other government or statutory charge which is imposed on a supply (including import duties but excluding income and capital gains taxes payable by us) the price will be adjusted by the amount of the same.

8. Invoicing and Payments

- 8.1 Unless a quote expressly provides otherwise you must pay us as set out in this clause.
- 8.2 We may invoice you:
- (a) for goods within 7 days of the delivery of such goods or the expiry of the holding period in respect of any goods which remain in our possession at that date (if the goods are delivered in batches, we may issue separate invoices for each such delivery);
 - (b) for services - within 7 days providing the services (we may issue invoices for part performed services as and when we think fit including where one of our contractors has invoiced us in respect of the same).
- 8.3 Unless a quote provides otherwise you must pay our invoices in full within 30 days from the end of the month in which the invoice is issued.
- 8.4 All payments will be made in full. You may not deduct or set off from any amount due to us under a contract any amount (including a liability) you allege we owe you unless we agree in writing. An invoice is payable by you alone and under no circumstances may you withhold payment on the basis you are awaiting payment from any third party or request we seek payment directly from any third party. You must pay GST on an invoice as and when you are required to pay the invoice.
- 8.5 Payments must be made by electronic means and not by cash or cheque. If you pay an invoice by credit card you must also pay us a credit card administration fee.

- 8.6 We may set off any amount we owe you under or in respect of any contract against any or all amounts you owe us under or in respect of any contract.
- 8.7 If payment is overdue, we may charge you interest at Australian and New Zealand Banking Corporation Limited's Business Variable Reference Rate plus 2% from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding interest or principal as we may decide. We may also apportion any payments you make under one contract to amounts due under another contract.
- 8.8 If payment is overdue under any contract, we may in respect of any contract cancel or suspend the delivery or performance of any supply. You must still pay us for any supply (or part thereof) delivered or performed under any such contracts (this includes any goods ordered by us but not yet delivered such as shipments from overseas or goods in manufacture).
- 8.9 Payment is not deemed to be received until we receive cleared funds.
- 8.10 If we determine that any goods ordered by you are non-standard goods then we may at any time request you pay us for the same in full in advance or pay us a deposit equal to 90% of quoted price for such goods. You agree to pay us in full for such non-standard goods or the 90% deposit (as applicable) within 7 days of a demand by us for payment. Where you pay the 90% deposit, we may require you to pay us the balance of the price before we dispatch the goods to you.

9. Your Obligations

- 9.1 You must provide us with all information, data, logos, graphics, and text you require to be included in any supply (**artwork**).
- 9.2 You agree to promptly respond in full to any queries or directions we require to carry out the supply. You acknowledge and agree that we cannot commence a supply if you do not provide us with any required artwork and provide any sign off we require in respect of any proofs of such artwork.

10. Performance

- 10.1 We may refuse to commence any work on a supply without your prior written acceptance of our quote.
- 10.2 We will make every effort to fulfil orders and to comply with any delivery or completion date provided in the quote, but if our ability to do so is affected by circumstances or events beyond our control then we may:
- (a) acting on a reasonable basis and in consultation with you, elect to extend the time for fulfilment of the order or compliance with any such delivery or completion date; or
 - (b) terminate the contract without liability for breach of the contract or for any antecedent breach.
- 10.3 In any event we will be entitled to full payment for all goods which have been delivered and for any services which have been performed. We will have no liability to you for any loss (including consequential loss) you incur arising from any delay in making the supply or the early termination of any contract under clause 10.2.

11. Delivery

- 11.1 Unless a quote provides otherwise goods will be:
- (a) supplied from the address on our quote to the address stated in the quote;
 - (b) delivered to you based on a delivery schedule agreed with you (but no later than the end of the holding period).
- 11.2 Where goods are:
- (a) collected by you or your agents or contractors, the goods are deemed to be delivered to you when placed on the transport vehicle; or
 - (b) transported by us to a site designated by you, the goods are deemed to be delivered to you when they are unloading from our vehicle.
- 11.3 Unless a quote provides otherwise you must accept delivery or collect the goods in full by the end of the holding period. If you fail to do so we may in our sole discretion (none of which affects our general law rights against you):
- (a) deliver, at your cost, the goods to your premises and invoice you for the same;
 - (b) on-sell the goods and recover our costs and loss from you in respect of the same; or
 - (c) invoice you for the goods and charge you a storage fee (invoiced monthly) until you collect the goods from our premises.

12. Acceptance and Returns

- 12.1 You are deemed to have accepted the goods 48 hours after they are delivered to you unless you give us notice that you do not accept the goods and you have the right to do so. Where you properly refuse to accept goods, you must, at your cost, return the goods to us.
- 12.2 If the goods are defective, you may return them to us as set out in this clause. We will repair or replace defective goods which you return to us as set out in this clause (**Limited Warranty**). You must make a claim in respect of the Limited Warranty within the time specified in clause 12.1. **The Limited Warranty is given by OE & DR Pope Pty Ltd (ACN 007 645 810), 5 Boundary Road, North Melbourne, Victoria 3051, phone (03) 9322 1444, ar@popes.com.au.** You may make a claim in respect of the Limited Warranty by emailing or giving us notice of the same.

- 12.3 We may accept the return of non-defective goods only at our complete discretion and provided that, you provide us with a prior written request and pay the cost of delivery and return of the goods to us in original condition within 7 days of initial receipt. We reserve the right to impose a handling charge in such cases. Under no circumstances will we be required to accept the return of non-defective goods which are non-standard goods. To be valid any approval under this clause must be in writing and issued by one of our directors, our general manager or one of our branch managers.
- 12.4 If we agree to the cancellation of orders for non-standard goods you must immediately pay all of the costs, and expenses we have or will incur because of such cancellation (in addition, you will forfeit the non-refundable deposit).
- 12.5 We will use all reasonable efforts to ensure the number of goods delivered matches the number specified in a quote. However, the nature of the goods we manufacture means that it is not possible to ensure the number of goods manufactured exactly complies with a quote. As such, you agree that the number of goods we supply under a contract may be up to 10% more or less than stated in a quote in which case the price payable by you under the contract will be adjusted by us on a pro rata basis to reflect any under or over supply of goods from that stated in the applicable quote. Any claims for shortages in delivery must be in writing and received by us within 7 days of delivery.

13. Title and Risk

- 13.1 Title to the goods does not pass to you until we receive payment for the goods in full. Until you make full payment you are to keep the goods in their original condition for us in your capacity as trustee. If required, you must store the goods in such a way that they can be identified as our goods. We may enter your premises to take possession of goods where payment to us is overdue. If we take possession of the goods and re-sell the goods, we must pay you such amount (if any) received by us exceeding the amount owed by you under the contract plus our costs in relation to the sale and storage of the goods.
- 13.2 Despite the above, you may sell the goods to a third party in the normal course of your business provided that:
- (a) where you are paid by that third party, you hold the whole of the proceeds of sale on trust for us; and
 - (b) where you are not paid by that third party, you will at our option assign your claim against that third party to us on notice from us. You will pay the stamp duty on any such assignment. For the purpose of perfecting any such assignment you irrevocably appoint us as your agent.
- 13.3 For the purposes of clause 13.2, you hold the book debt arising on the sale of goods, or on payment, the proceeds of sale upon trust for us (but only to the extent of the monies and any outstanding interest owing to us in respect the contract). We will have first right to payment of our claim from the book debt in priority to any other creditors. The balance of the book debt or proceeds belong to you. If you make new goods from our goods using other goods or materials, or if our goods in any way become part of any other goods, we own these new goods until you pay us in full. The ownership of such new goods, (whether finished or not) is transferred to us when our goods are converted into new goods or become part of other goods.
- 13.4 Risk in the goods passes from us to you the sooner of (a) delivery, or (b) the expiry of the holding period. You must have insurance in place which covers the goods from loss or damage from the time risk in the goods passes to you.
- 13.5 If we determine that a contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA (including under the retention of title provisions in these terms), you agree to do anything (such as obtaining consents, signing, and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected, and otherwise effective,
 - (b) enabling us to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by us; or
 - (c) enabling us to exercise our rights in connection with the security interest.
- 13.6 Without limiting any other provision of these terms, and to the extent permitted by the PPSA, you waive your rights to receive any notice under the PPSA, including a notice of a verification statement under section 157(3) of the PPSA in respect of any financing statement or financing change statement relating to the security interests. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, 143 and 157(1), which sections (or parts of sections) shall not apply. For the purposes of this clause 13, the terms "financing statement" and "verification statement" have the respective meanings given to them under in the PPSA.
- 13.7 Pursuant to section 123 of the PPSA, if you default in payment of any money owing by you to us, we or agents will have the right to enter the premises where the goods are believed to be stored to take possession of and remove all or any of the goods. For these purposes you will grant or cause to be granted reasonable access rights to us or our agents and we or our agents will be entitled to do all things required to secure possession and remove the goods without liability for the tort of trespass, negligence or payment or any compensation to you in respect of such assess.

14. Designs and Intellectual Property

- 14.1 You warrant to us that you own or have appropriate legal rights in all intellectual property in all artwork and materials provided to us for development or inclusion in a supply (including any trademark, product name, graphic logo, or other thing) and that the same will not infringe the intellectual property rights of any third party. You indemnify us for any liability arising from a breach of the warranties in this clause. If we create a good subject to your design, you warrant that the good and design do not infringe the intellectual property rights of any third party.
- 14.2 If our supply includes the supply of design work proofs, we may charge you an additional amount for (a) any corrections to the proof arising from the materials you provided to us, and (b) any amendments to the design of a proof which we carry out on your request. We are not liable for any errors in a final proof which you approve regardless of whether such approval is in writing or verbal.
- 14.3 Unless expressly stated in our quote on paying our invoices in full we will (for no additional cost) grant you a perpetual, non-exclusive, transferable licence to use any intellectual property in the final artwork designed or created by us (**our design**) for the purposes of the supply to you (if no purpose is expressed or clearly implied then the purpose will be deemed to be for use in conducting your business). You may only transfer the licence on the same terms and on giving us prior notice of the same.
- 14.4 We retain ownership of intellectual property in all drafts, concepts and designs we create in performing a supply which are not used in the final work. We warrant to you that in creating our design we will not knowingly infringe any third party's intellectual property rights. However, it is possible that any logo, graphic or other thing in our design could infringe a third party's existing intellectual property rights (including an existing registered or general law trademark) in the area you intend to use the final artwork. As such, we strongly recommend that you have professional intellectual property searches done before or during the design phase or before you commence any public use of our design.
- 14.5 You acknowledge and agree that we retain ownership in all intellectual property in any proprietary goods we provide to you (including specification in respect of such goods) and you have no right to directly or indirectly use that intellectual property to manufacture such goods. Where a good is subject to a patent or we have an exclusive licence to manufacture or distribute that good, you agree that you will not directly or indirectly manufacture that good.
- 14.6 If any party brings a claim against you alleging our design infringes their intellectual property rights you agree to:
- (a) notify us in writing as soon as practicable of any infringement, suspected infringement or alleged infringement
 - (b) give us the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (c) provide us with reasonable assistance in conducting the defence of such a claim,
 - (d) permit us to modify, alter or substitute the infringing part of the supply, at our expense, to render the supply non-infringing; and
 - (e) authorise us to procure for you the authority to continue the use the supply.
- 14.7 If we are unable to do or obtain the things specified in clauses 14.6 (d) or (e) we may direct that you cease using the relevant intellectual property and we will pay you compensation up to an amount not exceeding the amount you have paid us under the contract in respect of any goods you are unable to use because of the intellectual property claim or our settlement of the same under this clause.

15. Confidential Information

- 15.1 A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:
- (a) to perform its obligations under a contract;
 - (b) as required by the mandatory operation of law;
 - (c) to its professional advisors (bankers, accountants, lawyers) for a proper purpose and on a confidential basis; or
 - (d) with the other party's prior written consent.
- 15.2 The obligations imposed under this clause 15 survive the termination of a contract. You also agree that we own all confidential information that we include in a quote (including our proposed pricing and specifications for goods). If you do not accept a quote, you agree not to provide our confidential information in respect of a quote (including pricing) to any third party.
- 15.3 In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with a contract (including in negotiating a contract and any quote we provide to you, whether or not you accept that quote). It however excludes: (i) information which is or becomes a matter of public record other than by a breach of this clause; (ii) information which the discloser certifies in writing as not being confidential information; and (iii) information which the recipient proves it lawfully possessed before obtaining it in connection with a contract.

16. Privacy

16.1 You agree to comply with all mandatory privacy laws which regulate the disclosure, use and collection of personal information (**Privacy Laws**). You agree not to do anything which would cause us to breach any Privacy Laws.

17. Instructions and Communications

17.1 Unless you give us notice to the contrary, we will assume that:

- (a) all of your employees, directors and officers who give us instructions are authorised to do so and that we may act on oral instructions;
- (b) we may communicate with you by e-mail. We cannot guarantee that such electronic communications will be secure or free from infection and we will have no liability for any loss or damage caused by electronic communications.

17.2 We are not liable to you for any damage or loss suffered by you which results from us following your directions or specifications in making, manufacturing, or designing goods or in performing the work.

18. Liability

18.1 Except as provided in this clause or prohibited by law, we disclaim and exclude all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage.

18.2 You agree that we are not liable to you for any consequential loss arising out of or in connection with a contract or any supplies made by us in respect of the same (whether in contract, negligence, or statute), regardless, whether we or you knew or ought to have known that it was possible or foreseeable that you may incur such consequential loss. In these terms **consequential loss** means any loss, damage, claim, expense, damage and or penalty (**loss**) that does not ordinarily or naturally flow from the breach, act or omission and includes, without limitation, indirect loss, loss of revenue, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties or loss of use.

18.3 Pursuant to clause 64A of the Australian Consumer Law, this clause applies if the goods or services we supply under a contract are not of a kind ordinarily acquired for personal, domestic, or household use or consumption. Our liability for a breach of a guarantee, condition or warranty conferred by the Australian Consumer Law (other than under sections 51 to 53 of the Australian Consumer Law) in respect of a contract and supply under the same, is limited to (as we may decide):

- (a) in the case of goods (i) the replacement of the goods or the supply of equivalent goods, or (ii) the repair of the goods, or (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods, or (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services (i) the supplying of the services again, or (ii) or the payment of the cost of having the services supplied again.

18.4 Nothing in clause 18.3, will exclude, restrict or modify any condition, warranty or right or liability implied into a contract or protected by law where to do so would render clause 18.3 void.

18.5 Our liability to you for all claims not subject to any cap, exclusion or limitation under any other subclause of this clause 18 (including arising by the operation of law) is limited to a maximum amount equal to the total amount you have paid to us for the applicable goods or services to which the claim relates. You agree that:

- (a) this is a genuine pre-estimate of your likely liability arising from a breach by us of a contract, our acts or omissions or negligence;
- (b) if this clause was not included, then either the terms of the contract on which we would have agreed to provide the supply would have been substantially different (including an increase in price).

18.6 Unless a contract expressly states otherwise, you warrant that you will acquire the goods from us under a contract for the purposes or re-supply or for transforming the goods in trade or commerce.

18.7 This clause applies where the warranty in clause 18.6 is not provided by you or you are otherwise a "consumer" under a contract within the meaning of section 3(1) of the Australian Consumer Law. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: (a) to cancel your service contract with us; and (b) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or services.

18.8 Where any of the caps or exclusions in this clause 18, do not apply (including by the operation of law), our maximum liability to you for claims covered by public and products liability held by us will not exceed \$20 million.

19. Selection of Goods

- 19.1 Subject to this clause you acknowledge and agree that (i) you have selected the supply based on your own requirements and your investigations as to the suitability of the supply, and (ii) we are not experts in and have not provided you with any advice as to the suitability of the supply (including as to the performance of any goods). Unless expressly set out in a quote or in a document signed by us, we give no warranty, advice, or representation as to the:
- (a) the suitability of the supply for your or your end users needs or requirements (including as to the suitability or compatibility of the goods to be used, filled or finished by particular equipment). This applies even if you tell us, or we can reasonably infer the intended use of supply;
 - (b) whether a supply will comply with any law or standard including which applies to the use you intend to make of the goods; and
 - (c) whether the goods will have the durability, other characteristics and performance you require;
 - (d) the period that any artwork applied to the goods will remain visible or readable and whether such artwork is able to cope with exposure to sun or to particular temperatures or water.
- 19.2 We are not liable in respect of defects or damage to the goods arising from:
- (a) design work for a supply done by others, or causes or events beyond our control;
 - (b) direct exposure of the goods to sun light, water or particular temperatures (unless we expressly agree in writing such goods have such durability);
 - (c) unauthorised alterations to the goods; or
 - (d) the goods have been improperly handled, located, used, maintained and/or stored.
- 19.3 You agree to inspect the goods prior to use to determine the suitability of the goods for your intended use (including any filling, finishing, or sealing) unless we have expressly set out in a quote or in a document signed by us that the goods will be suitable for your intended use. You agree to test at least one of the goods in respect of finishing, filling, and sealing (as applicable) before making general use of the goods. Where you have used any goods and then seek to reject those goods, on the basis they are faulty or make a claim against us asserting the goods do not meet agreed specifications, you must:
- (a) retain the goods and allow us to inspect the goods;
 - (b) answer any queries we have as to your use of the goods (including any attempted finishing, filling, or sealing of the goods); and
 - (c) allow us to inspect your finishing, filling and/or sealing line, to assist us in determining whether or not you have a proper claim against us in respect of the goods under the contract (where you fail to comply with these obligations you agree that we will have no liability to you in respect of the goods.).
- 19.4 We have no liability to you for the goods failing to meet any specification (including as to winding tension or tolerances such as beam width, tracking, scoping, tack, or sealing) unless we have expressly stated the goods will be compliant with any such specification in our quote or in a document signed by us. To avoid any doubt, clause 18.2 applies to any claim that the goods do not meet any specifications whether these were agreed in writing, arise from our conduct or representations or under law. You agree to indemnify us from any claims by third parties in respect of a supply (other than in respect of defects in the goods manufactured by us) including any claims by third parties that the goods (a) are not suitable for their intended use, (b) do not meet any representations you have made to the third party about the goods that have not been authorised or approved by us, or (c) because the goods do not have the characteristics or functionality required by that third party.

20. Indemnity and Costs

- 20.1 You indemnify us against any liability (including reasonable legal fees on a solicitor/client basis) which we may incur arising out of any breach by you of the contract or any negligence or wrongful act or omission by you.
- 20.2 You must pay us all our costs (on a solicitor/client basis) incurred in the recovery of monies owing by you or in otherwise enforcing our rights against you under a contract.

21. Termination

- 21.1 We may terminate all or any contracts by notice to you if:
- (a) you fail to pay any amount in full within 30 days of the due date under a contract;
 - (b) you breach any term or condition in a contract and fail to remedy that breach within 14 days of notice from us or the breach cannot be remedied;
 - (c) you are a company, and you are subject to a change in *control* from that existing on the date you entered into your first contract with us (*control* in this clause has the meaning given in section 50AA of the Corporations Act);
 - (d) you are subject to an insolvency event; and/or
 - (e) there is, in our opinion, a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under a contract.
- 21.2 You may terminate all or any contracts by notice to us if we become subject to an insolvency event. You may terminate a specific contract with us if (a) we are in breach of any of our material obligations under that contract, (b) you have notified us of the breach and (i) we have failed to rectify the breach within 14 days of such notice, or (ii) the breach is not capable of remedy and we have failed to pay you reasonable

compensation for the breach within 14 days of such notice, and (c) our breach would under general law give you a right to terminate that contract.

- 21.3 Where the Corporations Act stays or prevents a party from exercising a right to terminate a contract under these terms on the basis the other party is subject to an insolvency event, that party may suspend the performance of its obligations under a contract (other than any payment obligation which has or does accrue) unless and until the *controller* or *administrator* in respect of the other party (**Affected Party**) provides undertakings in writing acceptable to that party that the Affected Party is and will remain able to perform its obligations under the applicable contract. In this clause *controller* and *administrator* have the meaning given in section 9 of the Corporations Act.
- 21.4 Termination does not affect any of our rights or remedies existing before termination or arising from termination. Either party may terminate these terms on 30 days' notice. To avoid doubt termination of these terms does not affect any contract in place at the time of such termination of these terms.

22. Specifications and Drawings

- 22.1 Unless expressly included in a contract, all descriptive specifications, drawings, dimensions, and data appearing in catalogues and other literature supplied by us are approximate only and do not form part of the contract.
- 22.2 In the case of non-standard goods, you will provide all the information necessary for the manufacture of the goods and the performance of any services.

23. Force Majeure

- 23.1 We will not be liable for delay or failure to perform any of our obligations under a contract to the extent that such delay or failure is caused by a force majeure event.
- 23.2 A **force majeure event** means any circumstance not within our direct or reasonable control including labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant work site, malfunction, breakdown or damage to our plant or equipment, breach of contract, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, pandemic, epidemic, the weather or other natural events.
- 23.3 We may terminate a contract thirty business days after the occurrence of a force majeure event if in our opinion we are unable to perform the contract or can only perform the contract at a loss due to the effects of the force majeure event. You may terminate a contract for the supply of standard goods thirty business days after the occurrence of a force majeure event prevents us from performing the applicable contract. However, where the contract is for the supply of non-standard goods (or predominately for the supply of non-standard goods) you may only terminate that contract 90 business days after the occurrence of a force majeure event but only if at that time we or our contractors have not commenced the manufacture of those non-standard goods. Where you terminate a contract under this clause you are still liable to pay us for all supplies made under that contract prior to the date of such termination.

24. Assignments and Amendments

- 24.1 You may not assign your rights under a contract with us without our prior written consent.
- 24.2 We may use subcontractors to perform any part of the work without notifying you or obtaining your consent. No sub-contractor has authority to agree to any variation of the contract or any supply under it on our behalf.
- 24.3 A contract can only be amended by agreement in writing. We can only waive any of our rights under a contract by notice to you.

25. Law and Jurisdiction

These terms and each contract are governed by Victorian law and subject to this clause any dispute arising in connection with a contract, or these terms is subject to the exclusive jurisdiction of the courts of Victoria (and the Federal Court of Australia (Melbourne Registry)). We are entitled to bring proceedings in any court having jurisdiction (including any court outside of Australia where the supply is being made) in respect of any matter connected with a contract to efficiently enforce a contract and to protect our rights. You agree to consent to the recording, entry or acceptance of any judgement, arbitration decision or order we obtain in Australia in the courts of the jurisdiction where the supply is made or where you reside or are registered.

O.E. & D.R. POPE PTY LTD (ACN 007 645 810) trading as POPE PACKAGING