

Terms & Conditions

PARTIES

(1) EASYPACK LIMITED, a company incorporated and registered in England and Wales with company number 2693337 whose registered office is at Richmond House, Walkern Road, Stevenage, Hertfordshire, SG1 3QP (Supplier).

(2) THE CUSTOMER whose identity is as described in the Schedule hereto

I. Supply of the products

I.1 During the Term (as defined in Clause 14 herein), and as a condition of the terms of hire as set out in Clause 2 below the Supplier shall supply and the Customer shall purchase exclusively from the Supplier such quantities of consumables, airbag film and paper stock (Products) as the Customer may order under clause 3 in accordance with the terms and conditions of this agreement.

I.2 The Customer shall during the Term purchase Products with a combined Product Price of not less than the amount stated in the Schedule (Minimum Purchase Amount) from the Supplier, or, in respect of any period of time following the Term, the pro rata proportion of the Minimum Purchase Amount. The combined Product Price of the Products purchased by the Customer during the Term (or any period thereafter) shall be calculated by reference to the Product Prices in force during that year.

I.3 If the combined Product Price of Products purchased by the Customer during the Term (or part thereof) (Actual Purchase Amount) is less than the Minimum Purchase Amount (or pro rata proportion, as the case may be), then, except to the extent the shortfall in purchases was caused by the Supplier's default or by a Force Majeure Event, the Supplier may require the Customer to pay the Supplier the difference between the Minimum Purchase Amount and the Actual Purchase Amount (Deficit).

I.4 The Customer hereby acknowledges and agrees that the Deficit referred to above is a fair calculation of anticipated loss of revenue to the Supplier and reasonable to impose in all the circumstances, including (but not limited to or necessarily subject to) the consideration of any discount, reduced price or other benefit given to the Customer in relation to the hire of the Equipment

I.5 The Minimum Purchase Amount shall be adjusted on 1 January of each year to reflect any increases in the Product Prices during the previous year.



1.6 following the Term this Agreement and all its provisions shall continue in full force and effect and be deemed to have been extended accordingly unless notice is served in accordance with the provisions of Clause 15 herein.

2. Terms of equipment hire

2.1 During the Term, the Customer shall hire the machinery as more particularly described in the Schedule (Equipment) for the agreed hire fee as stated therein which is payable monthly in advance unless otherwise agreed in writing by the Supplier.

2.2 The Equipment shall at all times remain in the ownership of the Supplier and the Customer will have no rights in the Equipment other than as mere bailee.

2.3 The Equipment must only be used by the Customer and (unless the Supplier otherwise agrees in writing) must be kept at the address of the Customer set out in this Agreement. The Customer shall not sell, assign, charge or create any sub-lease over or otherwise dispose of or abandon the Equipment, nor allow the Equipment to become a fixture on any land or property.

2.4 The Customer shall keep the Equipment in good order and condition at all times and shall be responsible for making good any damage or loss to the Equipment which may occur while under the possession or control of the Customer, whether or not any such loss or damage is covered by the insurance policy as required pursuant to Clause 10 herein

2.5 The Customer shall allow the Supplier to enter on its premises upon reasonable notice in order to inspect the Equipment at any time during the term of this Agreement or following its termination in order to retake possession of it.

2.6 The Supplier will replace free of charge any Equipment proved to the Supplier's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Supplier and the carriers have received from the Customer notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

2.7 For Equipment which is manufactured by the Supplier or which bear one of the Supplier's trade marks, the Supplier grants the following guarantee:

2.7.1 the Supplier shall free of charge maintain the Equipment and, where the defects appear under proper use, will either repair or, at its option, replace defective components whenever possible within one working day from the date of reporting the fault provided that notice of the defects complained of or maintenance required shall be given to the Supplier upon their appearance; and

2.7.2 such defects shall be found to the Supplier's (reasonable) satisfaction to have arisen solely from the Supplier's faulty design, workmanship or materials; and

2.7.3 the defective Equipment shall if necessary be returned to the Supplier's factory if so requested by the Supplier

2.8 Save where otherwise excluded by statute the Supplier's liability under this Contract shall be to the exclusion of all other liability to the Customer whether contractual, tortious or otherwise for defects in the Equipment or for any loss or damage to or caused by the Equipment.

2.9 The Customer shall:

2.9.1 At all times keep the equipment in the environmental conditions recommended by the manufacturer of the Equipment.

2.9.2 Use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Supplier and

2.9.3 Not allow any person other than the Supplier's representatives to adjust, maintain, repair, replace or remove any part of the Equipment and

2.9.4 Shall ensure that the Supplier's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable the Supplier to perform its duties;

2.9.5 The Customer shall take all such steps as may be necessary to ensure the safety of any of the Supplier's representatives who visit any premises of the Customer. Further the Customer will indemnify the Supplier against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which we may incur either at common Law or by Statute (other than as a result of any default or neglect of the Supplier or of any person for whom the Supplier are responsible) in respect of personal injury to, or the death of any such employees, agents, sub-contractors or other representatives while on the Customer's premises, whether or not such persons are (at the time when such personal injury or deaths are caused) acting in the course of their employment;

2.9.6 Ensure that any instructions or manuals supplied by the Supplier for use of the Equipment will prior to the Equipment being brought into use be fully understood and will be observed by the Customer and any person who will be responsible for the use of the same.

2.10 All other conditions, warranties, stipulations or other statements whatsoever concerning the Equipment, whether express or implied, by statute, at common law or otherwise howsoever are hereby excluded; in particular (but without limitation of the foregoing) and save for the above Guarantee the Supplier grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the Equipment, whether express or implied, by statute, at common law or otherwise howsoever.

2.11 The Customer shall be deemed to have repudiated this Agreement and the Supplier may at any time thereafter serve notice accepting that repudiation (Default) and terminating this Agreement if:

2.11.1 the Customer fails punctually to pay on their due date any sums due under this Agreement or breaches any of its other terms (in particular, does not exclusively purchase the Products from the Supplier; or

2.11.2 the Customer (being an individual) (or where there is more than one Customer any of them) is the subject of an interim order or has a statutory demand made upon him under the Insolvency Act 1986 (or any statutory re-enactment thereof) or has a bankruptcy petition presented in respect of him; or

2.11.3 the Customer (being a Supplier) shall have a winding up petition presented in respect of it and/or a receiver, administrative receiver, or administrator appointed, or shall enter compulsory or voluntary liquidation; or

2.11.4 the premises where the Equipment is kept or any other premises of the Customer or any other goods on such premises are the subject of distraint or execution; or

2.11.5 the Customer shall do anything or omit to do anything which in the opinion of the Supplier may prejudice the Supplier's rights of ownership in the Equipment.

2.12 Without prejudice to the rights of the Supplier under this Clause 2, upon termination by the Supplier the Customer shall return the Equipment to the address which the Supplier shall specify and the Customer shall pay to the Supplier by way of damages:

2.12.1 all arrears of rental for the Equipment, any outstanding charges for Products sold and delivered and interest at the rate of 4% per annum, above Barclays Bank base rate from time to time, until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest);

2.12.2 all rentals which would have been payable for the remainder of the 30 days notice period (see below) plus:

2.12.3 all other sums due from the Customer to the Supplier under this Agreement;

2.12.4 and/or the cost of the Equipment if it cannot reasonably be recovered from the Customer in good working order and condition.

3. Product Orders

3.1 Subject to the provisions of Clause 1.2 herein each further or increased Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion.

3.2 No Order for Products shall be deemed to be accepted by the Supplier until it issues an Order Number or (if earlier) the Supplier notifies the Customer that the Order is ready for collection.

3.3 Each Order shall:

- (a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days;
- (b) specify the type and quantity of Products ordered

3.4 The Supplier shall assign an Order Number to each Order it accepts and notify such Order Numbers to the Customer together with the date by which the Order will be dispatched. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

3.5 Once an Order has been placed the Customer may not cancel that Order in whole or in part.

4. Manufacture and packing

4.1 The Supplier agrees that during the Term it will maintain sufficient stocks of Products to enable it to meet the Customer's forecasted requirements in accordance with the Schedule.

5. Delivery

5.1 Delivery of an Order shall be completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.

5.2 The Supplier shall not deliver Orders by instalments except with the prior written consent of the Customer. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as references to instalments.

5.3 Delays in the delivery of an Order shall not entitle the Customer to:

- (a) refuse to take delivery of the Order; or
- (b) claim damages; or
- (c) terminate this agreement, subject always to clause 15.2(c) and clause 15.2(m).

The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.

5.4 If the Customer fails to take delivery of an Order on the Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:

- (a) delivery of the Order shall be deemed to have been completed on the third Business Day following the day on which the Supplier notified the Customer that the Order was ready for dispatch; and
- (b) the Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.5 Each Order shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Products included in the Order and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.

6. Acceptance and defective products

6.1 The Customer may reject any Products delivered to it that are defective provided that notice of rejection is given to the Supplier:

- (a) in the case of a defect that is apparent on normal visual inspection, within three Business Days of Delivery; and
- (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent.

6.2 If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted such Products.

6.3 If the Customer rejects Products under clause 6.1 then the Customer shall be entitled to require the Supplier to repair or replace the rejected Products

6.4 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.

7. Title and risk

7.1 Risk in Products shall pass to the Customer on Delivery.

7.2 Title to Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) such Products; and
- (b) all other sums which are or which become due to the Supplier from the Customer for sales of Products or on any account.

7.3 If before title to Products passes to the Customer the Customer becomes subject to any of the events in clause 15.2(d) to clause 15.2(l) then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up such Products and, if the Customer fails to do so promptly,

enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.

8. Product prices

8.1 The Product Prices for the period from the Commencement Date to 31 December of that year shall be the prices set out in the Schedule, however, the Company reserves the right to make reasonable changes to the Product Prices to reflect the Customer's consumption of the Products but the Customer shall be given not less than one month's written notice of any such intended changes to the Product Prices.

8.2 The Product Prices are exclusive of amounts in respect of VAT, carriage and delivery charges and any insurance costs unless stated on any quotations or invoices. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Products.

9. Terms of payment

9.1 The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.

9.2 The Customer shall pay invoices in full and in cleared funds within 30 days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.

9.3 If the Customer fails to make any payment due to the other under this agreement by the due date for payment (due date), then, without limiting the Supplier's remedies under clause 15.2, the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per annum above Barclay Bank's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

9.4 The Supplier, without limiting any other rights or remedies it may have, may set off any amounts owed to it by the Customer under this agreement against any amounts payable by it to the Customer under this agreement.

9.5 All payments payable to the Supplier under this agreement shall become due immediately on its termination. This clause 9 is without prejudice to any right to claim for interest under the law or under this agreement.

10. Insurance

10.1 During this agreement the Customer shall maintain in force an insurance policy covering the full replacement value (as noted in the schedule annexed to this agreement) of the Equipment against all risks.

10.2 The interest of the Supplier in the Equipment shall be noted on the policy and, in the event of loss or damage to the Equipment, the proceeds of the policy shall be payable directly to the Supplier, the Customer authorising the Supplier to give a good and valid receipt in respect of such policy monies accordingly.

11. Limitation of liability

11.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

- (a) any breach of this agreement;
- (b) any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

11.2 Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987;

11.3 Without prejudice to clause 11.2, the Supplier shall not be liable in contract, tort or otherwise howsoever, and whatsoever the cause thereof (i) for any loss of profit, business, contracts, revenues or anticipated savings, or (ii) for any indirect or consequential damage of any nature whatsoever and the maximum liability shall not exceed in the aggregate the price actually paid by the Customer for the Products.

12. Assignment and sub-contracting

The Customer may not assign or transfer or sub-contract any of its rights, benefits or obligations under this agreement without the prior written consent of the Supplier. The Supplier may assign, transfer or sub-contract its rights and obligations under this Agreement and its rights in and to the Equipment .

13. Confidentiality

13.1 Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (Confidential Information).

13.2 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future and the Customer acknowledges that all the Intellectual Property Rights inherent in the Equipment and Products or used in connection with them are and shall remain with the Supplier.

14. Commencement and term

This agreement shall commence on the Commencement Date and shall remain in effect until terminated in accordance with clause 15, provided that any notice to terminate served under clause 15.1 shall not expire before the end date specified in the Schedule (Term)

15. Termination

15.1 Subject to (in the case of the Customer) there being no Deficit (as described in Clause 1.3) or Default situation as described in Clause 2.11, either party may, at any time following the Term, terminate this agreement by giving to the other not less than 30 days' notice.

15.2 A party shall be entitled to terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
- (c) the other party commits a series of persistent minor breaches which when taken together amount to a material breach; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (i) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(a) to clause 15.2(g) (inclusive); or
- (l) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (m) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

15.3 Termination of this agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

15.4 The carriage costs incurred in the return of the equipment to the Supplier shall be borne by whichever party raises the option to terminate under this clause.

15.5 In the event of Termination for whatever reason the Supplier shall not be obliged to give credit for Products ordered or paid for and/or in the possession of the Customer but no longer required or usable by the Customer.

16. Obligations on termination

16.1 On termination of this agreement each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Products under this agreement;
- (b) return to the other party all documents and materials (and any copies) containing the other party's

Confidential Information;

- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause.

16.2 on termination of this agreement the Customer shall pay to the Supplier on demand all outstanding sums owed by it to the Supplier in respect of all products and Equipment and the Customer shall grant an irrevocable licence to enter the Customer's premises to recover any Products or Equipment.

17. Survival of obligations

On termination of this agreement clauses 10,11,13,16 and 26 shall survive and continue in full force and effect

18. Force majeure

18.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

18.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

18.3 For the purposes of this clause 18, a Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

19. Severance

19.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20 Further assurance

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this agreement and the transactions contemplated by it.

21. Variation and waiver

21.1 Any variation of this agreement must be in writing and signed by or on behalf of the parties.

21.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

21.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

21.4 No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

22. Notices

22.1 A notice served under this agreement:

- (a) shall be in writing in the English language;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent for the attention of the person, and to the address or fax number, given in this clause 22 (or such other address, fax number or person as the relevant party may notify to the other parties in accordance with the provisions of this clause 22); and
- (d) shall be:
 - (i) delivered personally; or
 - (ii) sent by commercial courier; or
 - (iii) sent by pre-paid first-class post or recorded delivery; or
 - (iv) (if the notice is to be served by post outside the country from which it is sent) sent by airmail requiring signature on delivery.

22.2 The address for service of notice for the Customer is as stated in the Schedule hereto; and the address for the Supplier is:

Address: Unit 1, The iO Centre, Whittle Way, Arlington Business Park, Stevenage, Herts SG1 2BD

For the attention of: sales department

Email: sales@easypack.net

22.3 A notice or any other communication given in connection with this agreement is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) in the case of pre-paid first class post or recorded delivery, on the second Business Day after posting; or
- (d) in the case of airmail, on the fifth Business Day after posting.

22.4 For the purposes of this clause:

- (a) all times are to be read as local time in the place of deemed receipt; and
- (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on any Business Day), the notice shall be deemed to have been received at the opening of business on the next Business Day in the place of receipt.

23. Entire agreement

23.1 This agreement and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede[s] any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

23.2 Each party acknowledges that, in entering into this agreement, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this agreement or the documents referred to in it.

23.3 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this agreement.

23.4 Nothing in this clause shall limit or exclude any liability for fraud.

24. Rights of third parties

No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

25. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement but all the counterparts shall together constitute the same agreement.

26. Governing law and jurisdiction

26.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.