

# LINDUM PACKAGING LIMITED

## Terms & Conditions of Purchase

### 1. Interpretation

1.1 Definitions: In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>Commencement Date</b>	has the meaning set out in clause 2.1.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 15.8.
<b>Contract</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Customer</b>	Lindum Packaging Limited registered in England and Wales with company number 3686136.
<b>Delivery Location</b>	has the meaning set out in clause 4.2.
<b>Force Majeure Event</b>	has the meaning given to it in clause 15.1.1.
<b>Goods</b>	the goods (or any part of them) set out in the Purchase Order.
<b>Goods Specification</b>	any specification for the Goods, including any relevant plans or drawings as set out in the Purchase Order.
<b>Intellectual Property Rights</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Order Acknowledgement</b>	the Supplier's order acknowledgment for the supply of Goods and/or Services.
<b>Services</b>	the services supplied by the Supplier to the Customer as set out in the Service Specification.
<b>Service Specification</b>	the description or specification for the Services as set out in the Purchase Order.
<b>Supplier</b>	the person or firm who supplies the Goods and/or Services to the Customer.
<b>Supplier Materials</b>	has the meaning set out in clause 5.1.

1.2 Construction: In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed

as illustrative and shall not limit the sense of the words preceding those terms; and  
1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## **2. Basis of contract**

- 2.1 When the Supplier issues the written Order Acknowledgement this is the date upon which the Contract shall come into existence (Commencement Date).
- 2.2 The Contract constitutes the entire agreement between the parties. The Supplier acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Customer which is not set out in the Contract.
- 2.3 Any quotation given by the Supplier shall constitute an offer, and is valid for a period of 30 Business Days from its date of issue.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. Goods**

- 3.1 The Goods are described in the Purchase Order.

## **4. Delivery of Goods**

- 4.1 The Supplier shall ensure that:
  - 4.1.1 each delivery of the Goods is accompanied by a delivery document which shows the date of the Purchase Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.2 Unless otherwise agreed, the Supplier shall deliver the Goods to the location set out in the Purchase Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of Goods Receiving procedures by the Customer.
- 4.4 Any dates quoted for delivery of the Goods are fixed, and the time of delivery is of the essence. The Supplier shall be liable for any delay in delivery of the Goods, including any delay that is caused by a Force Majeure Event.
- 4.5 If the Supplier fails to deliver the Goods, it shall be liable for all losses suffered by the Customer as a result of such delay.
- 4.6 The Customer shall be entitled to reject the Goods if the Supplier delivers more or less than the quantity of Goods ordered.
- 4.7 Should the Customer agree that the Supplier may deliver the Goods by instalments, they shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall entitle the Customer to cancel any other instalment.

## **5. Quality of Goods**

- 5.1 The Supplier warrants that on delivery the Goods shall:
  - 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
  - 5.1.2 be free from material defects in design, material and workmanship;
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
  - 5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
  - 5.2.3 the Supplier (if asked to do so by the Customer) collects such Goods at the Customer's place of business at the Supplier's cost,the Customer shall, at its option, direct the Supplier to repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
  - 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - 5.3.2 the Goods differ from the Goods Specification as a result of changes made without notifying the Customer to ensure they comply with applicable statutory or regulatory standards.
- 5.4 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

## 6. Title and risk

6.1 The title and risk in the Goods shall pass to the Customer on completion of delivery.

## 7. Supply of Services

7.1 The Supplier shall provide the Services to the Customer in accordance with the Purchase Order in all material respects.

7.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order, and time shall be of the essence for the performance of the Services.

7.3 The Supplier shall not have the right to make any changes to the Services without first having obtained permission from the Customer.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. Customer's obligations

8.1 The Customer shall:

8.1.1 ensure that the terms of the Purchase Order and (if submitted by the Customer) the Goods Specification and/or Service Specification are complete and accurate.

8.1.2 co-operate with the Supplier in all matters relating to the Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects which will include confirming any approvals or instructions of the Supplier when requested to do so;

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default;

8.2.2 the Customer shall not be liable for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2.

## 9. Charges and payment

9.1 The price for Goods shall be the price set out in the Purchase Order. Unless otherwise stated the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods.

9.2 The charges for Services shall be set out in the Purchase Order:

9.3 The Supplier shall not have the right to increase the price of the Goods and/or Services, to the Customer.

9.4 The Supplier shall invoice the Customer on or at any time after completion of despatch.

9.5 Unless otherwise agreed, the Customer shall pay each invoice submitted by the Supplier:

9.5.1 within 60 days from the end of the month in which the invoice was raised; and

9.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, however

time of payment shall not be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 The Customer shall be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any amount in whole or in part.

## 10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Customer.

10.2 The Supplier acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Supplier shall obtain a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

## 11. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

## 12. Limitation of liability: THE SUPPLIER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 12.1.5 defective products under the Consumer Protection Act 1987.

12.2 Further to clause 12.1:

- 12.2.1 the Supplier shall be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2 the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances be limited by the Supplier's level of insurance.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, included in the Contract.

12.4 This clause 12 shall survive termination of the Contract.

## 13. Termination

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 13.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach;
- 13.1.2 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.1.3 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 13.1.6 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;
- 13.1.7 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 (being a company);
- 13.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.1.9 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;
- 13.1.10 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 13.1.2 to clause 13.1.9 (inclusive);
- 13.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 13.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

## 14. Consequences of termination

On termination of the Contract for any reason:

- 14.1.1 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 14.1.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 15. General

15.1 Force majeure:

- 15.1.1 For the purposes of this Contract, Force Majeure **Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.1.2 The Supplier shall be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.2 Assignment and subcontracting:

- 15.2.1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 15.2.2 The Supplier shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

- 15.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 15.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

15.4 Waiver and cumulative remedies:

- 15.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

- 15.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid

and enforceable.

- 15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 15.9 Governing law and jurisdiction: This Contract, 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, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.