

Standard Terms and Conditions of Purchase of Deliverables

1. Definitions:

In these terms and conditions, the following expressions shall have the meanings set out against them:

The Buyer shall mean Primepak Manufacturing Pty. Ltd., ABN: 74 113 285 493

The Supplier shall mean the company described as the source of the goods on the purchase order

"Deliverables" shall mean those items listed on the attached purchase order, and includes all products, goods and services supplied "Deliverables";

"Effective Date" means the date upon which the Supplier commences providing the Deliverables to the Buyer;

"Purchase Orders" shall mean orders for Deliverables issued by the buyer to Supplier pursuant to these terms and conditions. A Purchase order will be in the form, electronic or hard copy, of a purchase order or other document ordering Deliverables that incorporate these standard terms and conditions in its terms;

"Prices" shall mean the unit prices of the Deliverables to be provided hereunder by the Supplier and shall include any discounts, rebates, or sharing of cost savings associated with the Deliverables

2. Acceptance of Purchase Orders:

- 2.1 Any of the following acts of Supplier shall constitute acceptance of The Buyer's Purchase Order and all of these terms and conditions without modification: Supplier's delivery of any of the Deliverables; Supplier's commencement of performance under a Purchase Order; or Supplier's acknowledgement of The Buyer's Purchase Order.
- 2.2 Any terms different from or additional to the terms of The Buyer's Purchase Order which may be contained in Supplier's acknowledgement or Supplier's other documents are expressly rejected by The Buyer unless accepted in writing by an authorised representative of The Buyer. The Buyer's Purchase Order is expressly conditional upon acceptance of the terms of the Purchase Order unless an authorised representative of The Buyer otherwise agrees in writing.
3. **Independent Supplier Relationship**
 - 3.1 The relationship of the Supplier to The Buyer is that of an independent contractor and nothing herein shall be construed as creating any other relationship. .
 - 3.2 Supplier accepts, in connection with the work called for hereby, exclusive liability for the payment of any taxes or contributions measured by Supplier's income or levied on Supplier's property (real or personal). Supplier also assumes all liability for Social Security, unemployment insurance, annuities or retirement benefits which are measured by wages, salaries or other remuneration's paid by Supplier to any and all persons employed by it in connection with the performance of the work, and to comply with all valid Federal and State administrative regulations respecting the assumption of liability for any of the aforesaid taxes or contributions. Supplier represents that the Purchase Order prices incorporated herein include all such taxes or contributions and agrees to indemnify and hold the Buyer and its directors, officers and employees harmless from and against any and all liability for the delay or failure of Supplier and its subcontractors to pay any such taxes or contributions.
 - 3.3 Supplier agrees to take appropriate steps prior to the Effective Date to ensure that its employees and any subcontractor's employees will not engage in inappropriate conduct while on a The Buyer's premises. Inappropriate conduct shall include, but not be limited to: being under the influence of, or affected by alcohol, illegal drugs, or controlled substances; the manufacture; use distribution, sale or possession of alcohol, illegal drugs, or controlled substance, the possession of a weapon of any sort; and/or harassment, threats or violent behavior. Violation of this provision may result in termination of this Purchase Order and any other remedy available to The Buyer in law or equity.
4. **Delivery, Transit, Quantity:**
 - 4.1 **Delivery:** Supplier shall furnish the Deliverables called for by a Purchase Order in accordance with the delivery schedules stated in The Buyer's Purchase Order or under delivery schedules separately provided to Supplier. The Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Unless otherwise agreed in writing, deliveries shall be F.O.B. destination, and The Buyer may defer payment for, or return at Supplier's expense, any Deliverables delivered more than two weeks in advance of the scheduled delivery date or in excess of the quantity specified for such Deliverables. Time is of the essence for the performance the Purchase Order.

- 4.2 **Notice of Delay:** Whenever an actual or potential reason for delay (including but not limited to labour disputes), delays or threatens to delay the timely performance of a Purchase Order, Supplier agrees to immediately notify The Buyer in writing of all relevant information and, subject to the force majeure provision set out in these terms and conditions, to make and pay for all necessary changes to fulfill its obligations under the Purchase Order and mitigate the potential impact of any such delay. The Buyer has the right to cancel any order for Deliverables affected by the delay in performance.
- 4.3 **Insurance and Risk of Loss:** Unless otherwise mutually agreed in writing, risk in the Deliverables shall pass to the Buyer on delivery of same to the Buyer. Supplier shall be responsible for any damage to or loss of Deliverables in transit to the location. Where Supplier agrees to deliver the Deliverables to a location at The Buyer's risk and Supplier arranges the transport of the Deliverables, unless otherwise agreed in writing, Supplier shall insure the Deliverables for their full value while in transit.
- 4.4 **Packing:** Supplier shall not charge separately for packaging, packing or boxing, unless The Buyer has agreed to such charges in writing. Supplier shall not combine in the same container, material that is to be delivered to different receiving locations.
- 4.5 **Marking:** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (1) Address of The Buyer and Supplier; (2) Purchase Order number; (3) Part number; (4) Special markings called for on the Purchase Order; (5) Quantity; and (6) (where applicable) Vendor Code or other vendor identification number.
- 4.6 **Packing Slip:** Unless otherwise agreed between The Buyer and Supplier, Supplier shall include an Itemized packing slip with all shipments which will adequately identify the Deliverables shipped, including part number and the applicable Purchase Order number.
- 4.7 **Test Reports:** Any Supplier test reports or other test results related to the Deliverables shall be provided to The Buyer as set forth in the terms of the Purchase Order, or if not specified in the Purchase Order terms, upon The Buyer's request.
- 4.8 **Hazardous Materials:** If the products or materials to be shipped under a Purchase Order have been classed as hazardous materials by any Authority, Supplier warrants that the product shall be packaged, marked, labeled and transported in full compliance with all applicable laws. Supplier shall hold harmless and indemnify The Buyer for Supplier's failure to comply with the requirements of this provision.
5. **Changes:** The Buyer (through its authorised purchasing personnel only) shall have the right at any time prior to the delivery date of the Deliverables to make changes (i) in drawings, designs, specifications if the Deliverables are manufactured to The Buyer's drawings, designs and/or specifications; or (ii) in packaging, time or place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of a Purchase Order, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly; provided, no equitable adjustment in price will be applicable to changes in delivery schedule where deliveries continue to be scheduled in either the same calendar year or, if not in the same calendar year, within four (4) months of the existing delivery schedule. Supplier's claims for an equitable adjustment under this Article shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to The Buyer within thirty (30) days, or other period agreed in writing by The Buyer, from the date Supplier receives the change. Supplier shall provide supporting documentation justifying its claims, and if requested, shall promptly provide additional clarification or support for such claims as reasonably requested by The Buyer.
6. **Inspection, Rejection:** All Deliverables being manufactured to The Buyer's specifications and/or drawings covered by a Purchase Order may be inspected and tested by The Buyer or its designee, at all reasonable times and places, including during manufacture. Supplier shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests.
- 6.1 All inspection records relating to Deliverables covered by the Purchase Order and being manufactured to The Buyer's specifications and/or drawings shall be available to The Buyer during the performance of the Purchase Order and for such longer periods as specified by The Buyer.
- 6.2 If any Deliverables covered by the Purchase Order are defective or otherwise not in conformity with the requirements of the Purchase Order, The Buyer may, (i) rescind the Purchase Order as to such Deliverables, and rescind the entire agreement if such defect or non-conformity materially affects The Buyer; (ii) accept such Deliverables at an equitable reduction in price; or (iii) reject such Deliverables and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such Deliverables are replacements. If Supplier fails to deliver required replacements promptly, The Buyer may (i) replace, obtain or correct such Deliverables and charge Supplier the cost occasioned The Buyer thereby, or (ii) terminate the Purchase Order for cause.

- 6.3 Rejected Deliverables may be returned to Supplier at Supplier's cost.
7. **Infringement Protection, Patents and Copyrights:** Supplier shall defend, at its own expense, any suit or claim that may be instituted against The Buyer or any customer of The Buyer for alleged infringement of patents, copyrights or other intellectual property matters relating to Deliverables furnished pursuant to a Purchase Order, except for any such infringement necessarily resulting from compliance with detailed designs provided by The Buyer, and Supplier shall indemnify, hold The Buyer and its customers harmless in connection with all suits, claims, liability, loss, damages, costs or expenses arising out of such alleged infringements.
- 7.1 The Buyer shall have the right at no additional charge to use and/or reproduce for its use Supplier's literature provided to The Buyer and related to the Deliverables, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and other similar supporting documentation and sales literature. During the period of performance of the Purchase Order, Supplier shall supply The Buyer with any updated information relative to such literature and documentation.
8. **Confidential Information and Competitive Activities**
- 8.1 "Confidential Information" shall mean any information disclosed to Supplier by The Buyer, or, pursuant to the terms of any Purchase Order, created by Supplier under a Purchase Order and owned by The Buyer, that is (i) marked with a legend indicating its confidential nature, (ii) identified by The Buyer in a writing to Supplier within 30 days following disclosure that such information is confidential to The Buyer, or (iii) otherwise specified to be the confidential or proprietary information of The Buyer. Such information may include, by way of example and not limitation: computer programs and documentation; technical design, manufacturing and application information; customer information, supplier information (including information, such as price information, concerning The Buyer's past, present or future suppliers as well information received by Supplier from its current or future suppliers to meet its obligations under this Purchase Order); training information; financial information; personnel information; new product developments; advertising and business and marketing plans.
- 8.2 Supplier shall have no obligation of confidentiality with respect to any Confidential Information which:
- was not developed by Supplier hereunder and was already known to Supplier prior to acquisition from, or disclosure by The Buyer; or
 - is received without restriction as to disclosure by Supplier from a third party having the right to disclose it; or
 - is approved for Purchase Order by written authorization of The Buyer; or
 - is or becomes publicly known without fault of Supplier.
- 8.3 Supplier shall safeguard and shall neither disclose to any third person nor use for Supplier's own benefit nor for the benefit of others, Confidential Information however or whenever acquired by Supplier.
- 8.4 Supplier hereby represents and warrants that Supplier is under no obligation to any other person or company whereby conflicts of interest are or may be created by Supplier entering into or performing a Purchase Order with The Buyer.
- 8.5 The Supplier shall contractually bind its employees and such other persons or parties as may be used by the Supplier in the performance hereunder to obligations substantially the same as those established under this Provision, and, in the event of a breach of these obligations by such employees, other persons or parties, Supplier shall enforce such contractual provisions and, upon the written request of The Buyer, permit The Buyer to enforce such contractual provisions in Supplier's name.
- 8.6 Upon expiration or termination of the purchase order for reason whatsoever, Supplier shall promptly return to The Buyer or otherwise dispose of at The Buyer's direction, all Confidential Information.
9. **Invoicing and taxes:**
- 9.1 **Invoices:** Unless otherwise agreed in writing, all invoices must contain at a minimum the following information: Purchase Order number, Item number, description of Deliverables, sizes, quantities, unit prices, identification and address of Seller, identification of the Buyer and delivery location, any separate charges, total payments due and any discount terms. Payment of invoice shall not constitute acceptance of Deliverables ordered and shall be subject to appropriate adjustment for failure of Supplier to meet the requirements of a Purchase Order. The Buyer may set off any amount owed by Seller or any of its affiliated companies to the Buyer or any of its affiliated companies against any amount owed by the Buyer under the Purchase Order. Seller shall submit invoices to the accounts payable location identified by Buyer's procurement representative. Buyer's payment shall not constitute acceptance
- 9.2 **Taxes:** Unless the terms of the Purchase Order state otherwise, all taxes, duties and other costs are included in the unit prices of the Deliverables.
- 9.3 Payments will be computed from the latest of: (i) the scheduled delivery date; (ii) the date of actual delivery; or (iii) the date a properly filled out original invoice or packing list is received. Payment is made when Buyer's check is mailed or EDI funds transfer initiated or payment is received by Seller either at Buyer's offices or at Buyer's designated banks. Buyer shall make payment within thirty (30) days after Buyer's receipt of the proper original invoice or Buyer's receipt of Items or performance of Services, whichever is later.
- 9.4 Seller shall be responsible for and hold Buyer harmless for any and all payments to its vendors or subcontractors utilized in the performance of Services.
- 9.5 Seller agrees to invoice Buyer no later than one hundred eighty (180) days after completion of Services or shipment of Items. Buyer will not be obligated to make payment against any invoices submitted after such period.
- 9.6 Unless notified otherwise by Buyer in writing, all invoices are to be mailed to Buyer at the address listed on the Purchase Order, attention the Accounts Payable Department.
10. **Intellectual Property**
- 10.1 "Intellectual Property" shall mean all patents, copyrights, mask works, trademarks, Confidential Information and other rights and information of a similar nature worldwide contained in, arising out of, or applicable to, the Deliverables required to be delivered (including, but not limited to, any written materials such as reports or memoranda, software code, drawings, schematics, process sheets, evaluations, etc.) to The Buyer or specified to be performed for the benefit of The Buyer (such as improvements to The Buyer's processes, procedures or software) as part of the work hereunder.
- 10.2 Supplier will promptly disclose in writing to The Buyer all Intellectual Property as defined above. Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably assigns to The Buyer all right, title and interest to all Intellectual Property, and agrees to do all things reasonable necessary to enable The Buyer to secure patents, copyrights and other rights relating to Intellectual Property, including the execution of a specific assignment of title of any Intellectual Property to The Buyer. Supplier, on behalf of itself, its employees and any others used by Supplier, hereby irrevocably waives all "moral rights", in all materials provided to The Buyer. If the Supplier, its employees and any others used by Supplier fails or refuses to assign any such Intellectual Property, Supplier hereby irrevocably appoints the Buyer as its attorney in its place to do any such things as may need to be done to perfect such assignment
- 10.3 In addition to the rights in Intellectual Property described in subclauses 10.1 and 10.2 above, Supplier, on behalf of itself, its employees and any others used by Supplier, hereby grants to The Buyer worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable licenses (with rights to grant sublicenses to make, copy, distribute, display, perform, adapt and use, in any and all media), in any information other than Intellectual Property provided to The Buyer under this agreement.
- 10.4 Supplier hereby represents and warrants to The Buyer that all materials, devices and other information used by Supplier in performing the Services are lawfully and properly used by Supplier.
- 10.5 Supplier shall hold The Buyer harmless from and against all damages, liabilities and costs in connection with any claim that the exercise of any right(s) assigned/granted under this provision, infringes or violates any patent, copyright, trade secret or other intellectual property right or other right worldwide, provided that The Buyer: (i) gives Supplier notice of such claim, (ii) permits Supplier to defend or reasonably settle same, and (iii) gives Supplier all reasonable assistance to enable Supplier to do so.
- 10.6 Supplier shall contractually bind its employees and such other persons or parties as may be used by the Supplier in the performance of Services hereunder to obligations substantially the same as those established under this provision, and, in the event of a breach of these obligations by such employees, other persons or parties, Supplier shall enforce such contractual provisions and, upon the written request of The Buyer, permit The Buyer to enforce such contractual provisions in Supplier's name.
11. **Publicity:** Supplier shall not make or authorize any news Purchase Order, advertisement, or other disclosure which shall deny or confirm the existence of a Purchase Order or which shall make use of The Buyer's name without the prior written consent of The Buyer, except as may be reasonably required to perform the Purchase Order.
12. **The Buyer Furnished Material:** Should The Buyer furnish to Supplier any material (including, but not limited to, raw materials, samples, tools, dies, jigs, gauges, fixtures, patterns, molds, testing apparatuses, machinery, equipment and the like), such material shall remain the property of The Buyer, subject to repossession, or possession, by The Buyer any time. Supplier shall be liable for risk of loss of such material while in Supplier's possession and shall deliver same to The Buyer in the same condition as received by Supplier, reasonable wear and tear excepted. When The Buyer furnishes any raw material for the manufacture of Deliverables, Supplier shall not substitute raw material from any other source nor shall Supplier alter the physical or chemical properties of the Buyer furnished raw material except with The Buyer's written approval.
13. **Termination for Convenience:**
- 13.1 The Buyer may terminate, for its convenience, all or any part of a Purchase Order at any time by written notice to Supplier. The Buyer's sole obligation will be to pay for those Deliverables satisfactorily delivered or performed through the date of termination in accordance with the then current schedule at the time of the termination notice and for any cancellation charges that are specified in these terms and conditions to be made. Supplier shall submit any claim for any such defined cancellation charges within sixty (60) days following the termination and provide reasonably complete documentation supporting such claim. Supplier shall promptly submit any additional information reasonably requested by The Buyer related to Supplier's termination claim. In no event shall cancellation charges exceed the total Purchase Order price (as reduced by any payments previously made to Supplier), nor shall such

- charges include profit on terminated Deliverables. If part of the defined cancellation charges involve value of such Deliverables, Supplier shall make good faith, diligent efforts to apply terminated raw materials, work-in-process, or completed Deliverables that Supplier does not wish to receive to other customers of Supplier.
- 13.2 Termination of Quantities under Purchase Orders. In the event a The Buyer terminates for its convenience any quantities under a Purchase Order, the Participating Site's termination liability to Supplier shall be limited as follows:
- 13.3 Except as otherwise agreed in writing, termination costs shall be limited to (i) the cost of Deliverables that are (or were) required to be delivered pursuant to Purchase Orders within the "Lead Time Period" as defined below, and (ii) such charges that are allowed under this clause. The "Lead Time Period" for each terminated Deliverable will be that period having a commencement date as of the date of Supplier's receipt of the Buyer's termination notice, and an end date as of the applicable lead time forward, from such commencement date.
14. **Waiver:** The failure of The Buyer to insist upon the performance of any provision of a Purchase Order shall not be construed as waiving any such provision or any other provision.
15. **Permits and Licences:** Except for permits and/or licences required by statute or regulation to be obtained by The Buyer, Supplier agrees to obtain and maintain - at its own expense - all permits, licences and other forms of documentation required by Supplier in order to comply with all existing laws, ordinances, and regulations of the Commonwealth of Australia and of any state, county, township, or municipal subdivision thereof, or other governmental agency, which may be applicable to Supplier's performance of work hereunder. The Buyer reserves the right to review and approve all applications, permits, and licences prior to the commencement of any work hereunder.
16. **Remedies Cumulative:** The remedies of the Buyer shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any Deliverables or payment therefore shall not waive any breach.
17. **Insurance**
- 17.1 Without limiting Supplier's duty to defend, hold harmless and indemnify hereunder, Supplier agrees to secure and carry as a minimum during the entire term of this SUPPLY AGREEMENT and any Purchase Order, the following insurance:
- i) Workers' Compensation Insurance;
 - ii) General public liability insurance of not less than A\$20,000,000;
 - iii) Product liability insurance of not less than A\$20,000,000;
18. **Default**
- 18.1 the Buyer and The Buyers may, under each of the following circumstances, by written notice terminate and/or any Purchase Order issued hereunder in whole or in part for default without having any liability to Supplier:
- i) If Supplier fails to deliver any of the Deliverables as required under existing Purchase Orders within the time specified therein, and such failures are not excused under the Purchase Order terms, or Supplier fails to deliver any of the Deliverables as required under existing Purchase Orders that conform to the Purchase Order quality requirements; or
 - ii) If, without being excused, Supplier fails to perform any material provisions of Purchase Orders, and Supplier fails to make substantial and good faith steps to cure such failure to the Buyer's reasonable satisfaction within a period of thirty (30) days after receipt of notice from specifying such failure; or
 - iii) If the Supplier ceases to function as a going concern, or ceases to conduct its operations in the normal course of business, or a receiver or the like is appointed, or either party otherwise takes advantage of any insolvency law or files a petition in bankruptcy or the like;
 - iv) If there is a change in control of the management of the Supplier which the Buyer reasonably believes would adversely affect the liability of the Supplier to carry out its obligations under this Purchase Order in which case the Buyer will provide 30 days written notice of its intention to terminate this Purchase Order
- 18.2 The parties agree that the provisions of this Default clause shall not apply to failures or delays in making deliveries of Deliverables when such failure or delay is due to any cause beyond the control and without the fault or negligence of Supplier and Supplier's subcontractors as provided in the force majeure; provided, however, The Buyer may cancel without liability to Supplier its purchase of any such Deliverables.
- 18.3 Supplier will be responsible for a The Buyer's reasonable excess re-procurement costs if the The Buyer temporarily procures Deliverables from another supplier in order to meet its delivery requirements because of the failure of Supplier to meet the Participating Site's delivery schedules or quality requirements, and such failure was not excused under the terms of these terms and conditions or the Participating Site's Purchase Order.
- 18.4 In the event of a default under this clause, Supplier shall continue to be responsible for the performance of any Purchase Order which is not cancelled.
- 18.5 The Buyer shall have no obligation to accept or pay for Deliverables under any cancelled Purchase Order other than Deliverables delivered in accordance with such Purchase Order prior to cancellation except as otherwise specified in writing by the Buyer.
- 18.6 Upon termination of all a the Buyer's Purchase Orders under this clause, Supplier shall promptly return to the Buyer, or otherwise dispose of at the Buyer's direction, all drawings, specifications, information, tooling, raw materials and equipment in the possession of Supplier (except for such Deliverables required for any Purchase Orders not terminated).
- 18.7 **Partial Invalidity.** If in any instance any provision of these terms and conditions shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.
- 18.8 **Force Majeure.** Neither the Buyer, Supplier nor any The Buyer shall be liable for damages for any failure or delay in the performance of any Purchase Order resulting from causes beyond its and its subcontractors (if any) reasonable control including, but not limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, labour strikes, and lockouts. The Buyer may cancel without liability to Supplier its purchase of any Deliverables affected by Supplier's failure or delay in performance. The party incurring the delay shall give timely notice to the others of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. The parties shall jointly prepare a contingency plan to address the potential impact of any such event.
- 18.9 **Audit.** Supplier agrees to keep for a period of three (3) years after the expiration or termination of each Purchase Order complete and accurate records of all services performed and all amounts invoiced and received under such Purchase Order based on cost reimbursement or time and material. The Buyer or an authorized representative of The Buyer shall have the right to audit such records.
19. **PRODUCT SPECIFICATIONS/ IDENTIFICATION/ ERRATA**
- 19.1 Seller shall not modify the specifications for Items or Services without Buyer's written consent. Seller shall notify Buyer at least one hundred twenty (120) days in advance of any changes in the manufacturing process.
- 19.2 Seller shall cooperate with Buyer to provide configuration control and traceability systems for Items and Services supplied hereunder.
- 19.3 Seller shall provide Buyer with an errata list for each Item and shall promptly notify Buyer in writing of any new errata with respect to the Items.
20. **MERGER, MODIFICATION, WAIVER, AND REMEDIES**
- 20.1 This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. No modification, alteration, or amendment shall be effective unless made in writing, dated and signed by duly authorized representatives of both parties.
- 20.2 No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach.
- 20.3 Buyer's rights and remedies herein are in addition to any other rights and remedies provided by law or in equity.