



## TERMS AND CONDITIONS

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### 1 Dictionary

In these Standard Terms, the words below have the following meanings:

**Account Application** means the form approved by Ozpak and completed by the Customer for an account with Ozpak for the provision of Goods and/or Services.

**Additional Conditions** means Ozpak's pricing and additional conditions attached to these Standard Terms.

**Agreement** means any contract between Ozpak and the Customer formed under clause 3.3.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Business Day** means any day except a Saturday, Sunday or public holiday in Victoria.

**Change in Control** means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

**Confidential Information** means all information and other content disclosed by Ozpak to the Customer and includes these Standard Terms, the Additional Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than Ozpak (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

**Consequential Loss** means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

**Constituent Materials** means any goods, materials or other items that are required to be provided by the Customer to Ozpak in order for the Goods to be supplied and/or the Services to be delivered, including but not limited to wine, bottles, corks, screw lids, labels, packaging materials.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law or any equivalent part.

**Control** has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

**Customer** means the person named in the Application Form who requested that Goods and/or Services be supplied to it by Ozpak.

**Customer Background Materials** means all material in whatever form (including the Constituent Materials and any documents, specifications, designs, names, plans, processes, information and data) owned or licensed by the Customer and provided by, or on behalf of, the Customer to Ozpak for the purposes of an Agreement.

**Default Rate** means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic).

**Force Majeure Event** means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.

**Goods** means the goods to be supplied by Ozpak to the

Customer under an Agreement.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

**Guarantee** means a guarantee in favour of Ozpak in relation to the Customer's obligations under these Standard Terms and each Agreement.

**Insolvency Event** means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

**Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

**Invoice** has the meaning provided to it in clause 4.3.

**Loss** means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss and 'Losses' has a corresponding meaning.

**Offer** has the meaning provided to it in clause 3.1.

**Order** means any order or other request by or for the Customer to Ozpak for it to supply to the Customer any Goods and/or provide it with any Services, whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

**Ozpak** means Ozpak Pty Ltd (ABN 57 091 370 446).

**PDH Goods or Services** means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

**Purchase Price** has the meaning provided to it in clause 4.1.

**Quotation or Quote** means a quote or proposal, if any, provided by Ozpak to the Customer in respect of the Goods and/or Services.

**Services** means the services to be supplied by Ozpak to the Customer under an Agreement.

**Specifications** means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods or Services which are supplied by Ozpak or which may be available on the internet (including at [www.ozpak.com.au/resources.html](http://www.ozpak.com.au/resources.html)), including as provided in any Quote, Order, price list, catalogue, brochure or other document which describes the Goods or Services.

**Standard Terms** means these terms and conditions.

**Tax or Taxes** means any tax (which includes, without limitation, goods and services tax and wine equalisation tax), levy, duty, charge, impost, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

**Trading Limit** means the value of any trading account facility granted by Ozpak to the Customer pursuant to any account created under the Account Application.

### 2 Application

These Standard Terms apply to and govern the supply by Ozpak of Goods and provision of Services to the Customer from time to time and, more specifically, apply to and govern the supply by Ozpak of Goods and/or Services to the Customer which are to be provided under an Offer accepted by Ozpak under clause 3.3.

### 3 Formation of Agreement

- 3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an irrevocable offer to Ozpak for Ozpak to supply it with the Goods and/or provide it with the Services on the terms of:
- the Quote (if any);
  - the Additional Conditions;
  - these Standard Terms; and
  - the Order (if any),
- (Offer).**
- 3.2 By making an Offer, the Customer warrants and represents to Ozpak that it has read and understood these Standard Terms and the Additional Conditions, and agrees to be bound by them in full.
- 3.3 A contract will be formed between Ozpak and the Customer in respect of each Offer upon the earlier of Ozpak:
- notifying the Customer in writing that it accepts the Customer's Offer;
  - accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
  - accepting delivery of any of Constituent Materials the subject of the Offer;
  - making delivery to the Customer of the Goods the subject of the Offer; or
  - performing the Services the subject of the Offer.
- 3.4 An Agreement formed under clause 3.3 will comprise these Standard Terms, the Additional Conditions, any Account Application, the Order (if any, and only to the extent that any additional terms in the Order are accepted by Ozpak in writing), the Quote (if any) and the Invoice.
- 3.5 The Customer acknowledges that:
- the prices and other items quoted or estimated in a Quote remain valid and current and may be included in an Offer for a period of 30 days from the date of the Quote, and after such period Ozpak reserves the right to either alter those prices or items or withdraw the Quote for any reason whatsoever without notice to the Customer;
  - in circumstances where a Quote has not been issued by Ozpak in respect of particular Goods and/or Services but the Customer has nevertheless requested those Goods and/or Services under an Order, an Agreement in respect of those Goods and/or Services will still be formed where any of the circumstances in clause 3.3 are satisfied (that is, the absence of a Quote will not preclude an Agreement from being formed);
  - Ozpak is not bound to issue any Quote or accept any Offer and may decide not to issue a Quote or accept any Offer for any reason and in the sole discretion of Ozpak; and
  - a precondition to Ozpak accepting any Offer will be, if requested by Ozpak, each director, partner, proprietor or other person associated with the Customer (as nominated by Ozpak) executing a Guarantee and providing an original copy of that Guarantee to Ozpak.

### 4 Price and payment

- 4.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Additional Terms (**Purchase Price**).
- 4.2 The Customer acknowledges that additional fees and charges may apply as provided for in the Additional Conditions.
- 4.3 Ozpak may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (**Invoice**).
- 4.4 Ozpak may set off any amount owing by the Customer to Ozpak, whether or not due for payment, against any money due for payment by Ozpak to the Customer under any agreement, understanding or arrangement between Ozpak and the Customer.
- 4.5 Subject to clause 4.6, unless otherwise agreed in writing between the Customer and Ozpak, the due date for payment by the Customer to Ozpak of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement and any other amount payable under the Additional Conditions (**Due Date**) is

the date (if any) specified in the applicable Quote or, if no such date is specified:

- the due date agreed by Ozpak when accepting the Account Application (but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to Ozpak, does not exceed any approved Trading Limit) or such other date or period agreed in writing by Ozpak; or
  - if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date of delivery for the Goods or provision of the Services.
- 4.6 All amounts payable by the Customer to Ozpak must be paid by cash or EFT (in clear funds). In the case of payment by EFT, payment is deemed not to have been made until the funds are actually received in clear funds in Ozpak's nominated account.
- 4.7 If:
- the Customer has previously failed to make any payment to Ozpak by the Due Date for that payment;
  - the creditworthiness of the Customer is, in Ozpak's sole opinion, unsatisfactory; or
  - the applicable Quote stipulates that payment is required prior to the delivery of the relevant Goods or provision of the relevant Services,
- Ozpak may require payment of the Purchase Price and any other amount payable under the Additional Conditions in full prior to Ozpak delivering the relevant Goods or providing the Services.
- 4.8 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to Ozpak and to the extent permitted by law, Ozpak may, in its sole discretion, elect to do any one or more of the following:
- suspend any further deliveries to the Customer arising from any Agreement;
  - cancel any Agreement in respect of any Goods or Services not yet supplied or provided to the Customer in whole or in part by Ozpak;
  - exercise any right terminate any Agreement in accordance with clause 22.1;
  - enter the property of the Customer in order to repossess the Goods and the Customer grants Ozpak and its agents an irrevocable licence to do so;
  - dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from such goods;
  - charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until Ozpak receives payment of all such amounts (including all interest) by way of cleared funds;
  - cancel any Trading Limit or account facilities previously granted to the Customer by Ozpak (including under the Account Application);
  - cancel or reverse any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
  - exercise any rights which Ozpak may have under law, including the *Personal Property Securities Act 2009* (Cth).

- 4.9 The Customer may not set off or combine any amount owing by Ozpak to the Customer, whether or not due for payment, against any money due for payment by the Customer to Ozpak under an Agreement and the Customer must pay, and not withhold, any amount due to Ozpak under an Agreement notwithstanding the Customer may be in dispute with Ozpak regarding the Goods or Services supplied by Ozpak to the Customer.

### 5 Delivery of Goods and provision of Services

- 5.1 Ozpak will deliver the Goods to the Customer by the Customer collecting the Goods from the address nominated by Ozpak or as otherwise agreed in writing between Ozpak and the Customer.
- 5.2 Ozpak will endeavour, but is not obliged, to deliver Goods or make the Goods available for collection and provide the Services between the hours of 8.00am and 5.00pm Monday to Friday at the place of delivery or service provision (excluding on any public holiday at the place of delivery or service provision).

5.3 The Customer expressly authorises and grants Ozpak and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party in order for Ozpak to deliver the Goods or provide the Services.

5.4 If the Customer is required to collect the Goods from Ozpak then the Customer must collect those Goods at completion of production or QC clearance, whichever is the latter.

5.5 The Customer will be responsible, at its own cost, for the unloading of any Goods at the collection or delivery location and there must be a representative of the Customer present at the collection or delivery location at the time the Goods are collected or delivered and, if no such representative is present, a redelivery fee may be charged by Ozpak.

5.6 The Customer must, prior to taking possession of the Goods, inspect the Goods and immediately notify Ozpak in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, have any defect or otherwise do not meet any Specifications.

5.7 In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods), Ozpak shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.

5.8 Without limiting any other rights Ozpak may have, Ozpak will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of (including failure to collect the Goods).

5.9 Ozpak will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by Ozpak or set out in a Quote or Order however such dates are estimates only and Ozpak will not, in any circumstances or for any reason, be liable for late or part delivery of the Goods or provision of the Services and later delivery of Goods or provision of the Services does not entitle the Customer to cancel any order for the Goods or Services.

5.10 Without limiting clause 5.9, Ozpak may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods or Services because only a portion of the quantity ordered was delivered or provided and the Customer agrees that Ozpak will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.

5.11 If there are multiple Agreements in place at any one time then Ozpak may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods and provision of Services under the Agreements.

5.12 The Customer acknowledges and agrees that:

- (a) Ozpak may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
- (b) it will not request proof of delivery or other similar documentation from Ozpak; and
- (c) it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by Ozpak.

5.13 The Customer acknowledges and agrees that the Customer is responsible for the installation of the Goods and Ozpak will not be required to provide any installation or similar services to Ozpak in respect of the Goods.

## **6 Return of Goods**

6.1 The terms of this clause 6 are subject to clause 10 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 6.

6.2 Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Goods to Ozpak with the prior written consent of Ozpak and Ozpak will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of such returned Goods.

6.3 Any claims in respect of the Goods made by the Customer to Ozpak must be made within 30 days of the date of delivery of the Goods by Ozpak to the Customer.

6.4 The Customer will be responsible for the cost of having the Goods returned to Ozpak.

6.5 The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to Ozpak and determined by Ozpak to be damaged or not meet the Specifications will be at Ozpak's sole discretion.

6.6 If any Goods which are returned to Ozpak are not damaged and meet the Specifications, then Ozpak may, at the Customer's cost, return those Goods to the Customer.

## **7 Constituent Materials**

7.1 The Customer must provide Ozpak with any Constituent Materials which Ozpak requires in order to supply the Goods or provides the Services and the Constituent Materials must comply with any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars notified by Ozpak to the Customer.

7.2 The Customer shall be responsible for ensuring all Constituent Materials delivered by the Customer or on the Customer's behalf to Ozpak are of a merchantable quality, fit to be used by Ozpak in supplying the Goods or Services and free from any defects.

7.3 Title to, and property in, any Constituent Materials supplied by the Customer to Ozpak in respect of an Agreement remains with the Customer notwithstanding that Ozpak takes possession of the Constituent Materials.

7.4 Risk in the Constituent Materials passes to Ozpak once those Constituent Materials are unloaded and accepted by Ozpak at Ozpak's premises (or the premises of Ozpak's supplier or agent) and risk in those Constituent Materials passes back to the Customer upon the earlier of:

- (a) the Constituent Materials being removed from Ozpak's premises (or the premises of Ozpak's supplier or agent) for delivery to the Customer; and
- (b) if the Goods are to be collected by the Customer, at completion of production or QC clearance, whichever is the latter.

7.5 Ozpak shall have a general lien over the Constituent Materials (whether packaged or not) and any other goods of the Customer which are in the possession of Ozpak for all sums payable by the Customer to Ozpak. In the event that:

- (a) any amounts invoiced by Ozpak remain unpaid and in breach of clauses 4.5 and 4.6; or
- (b) an administrator, receiver or liquidator is appointed to the Customer,

Ozpak shall have the right to sell any such goods by public auction or private treaty and out of monies arising from the sale, Ozpak may retain the sum owed to it by the Customer and all charges and expenses relating to the detention and sale.

7.6 The Customer warrants that the Constituent Materials do not infringe the Intellectual Property Rights of any person.

## **8 Title and risk - Goods**

8.1 Title to, and property in, any Goods supplied under an Agreement remain with Ozpak and will only pass to the Customer once all moneys owing by the Customer to Ozpak in respect of the Agreement or any other agreement or arrangement between the Customer and Ozpak have been paid in full.

8.2 Risk in the Goods passes to the Customer upon the earlier of:

- (a) the Goods being removed from Ozpak's premises (or the premises of Ozpak's supplier or agent) for delivery to the Customer; and
- (b) if the Goods are to be collected by the Customer, at completion of production or QC clearance, whichever is the latter.

and:

- (c) the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and
- (d) the Customer indemnifies Ozpak against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left Ozpak's premises (or the premises of Ozpak's supplier or agent).

8.3 In the event that the Customer is required to return any Goods to Ozpak, risk in the Goods passes to Ozpak on acceptance and written confirmation of receipt of the Goods by Ozpak.

8.4 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1, and while the Goods remain in the Customer's full control and possession:

- (a) subject to clause 8.6, the Customer must hold the Goods as Ozpak's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without Ozpak's prior written consent (and if such Goods are sold or disposed of, the proceeds of the sale must be held in a separate account on trust for Ozpak and, as soon as reasonably practicable, paid to Ozpak);
- (b) keep and maintain the Goods in good and substantial repair;
- (c) the Customer must insure the Goods for their full replacement value and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as Ozpak's and referable to a particular Invoice;
- (d) Ozpak may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods;
- (e) Ozpak may at any time after payment is overdue require the Customer to deliver up the Goods to Ozpak and, if the Customer fails to deliver up the Goods immediately, Ozpak may enter the premises of the Customer or any third party where the Goods are stored and repossess them;
- (f) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of Ozpak. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to Ozpak will (without prejudice to any other right or remedy of Ozpak) immediately become due and payable to Ozpak; and
- (g) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
- 8.5 For the purposes of Ozpak exercising its rights under clauses 8.4(d) and 8.4(e), the Customer:
- (a) expressly authorises and grants Ozpak and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods or to remove or arrange for the removal of the Goods; and
- (b) the Customer indemnifies Ozpak against any Loss that may be incurred or sustained by Ozpak, its employees or agents, as a result of the entry of those premises where the Goods are stored.
- 8.6 Notwithstanding that title to the Goods has not passed to the Customer under clause 8.1, the Customer may, subject to obtaining Ozpak's prior written approval, resell the Goods or any part thereof in the name of the Customer but only as agent for Ozpak and may deliver any such Goods to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice Ozpak's ability to obtain the sale proceeds thereof and:
- (a) any amount paid or due to be paid by the buyer of such Goods to the Customer (**Sale Proceeds**) must be held by the Customer on trust for Ozpak and any amounts paid must be banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible to Ozpak in satisfaction of any amount owed by the Customer in respect of the Goods;
- (b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide such records to Ozpak immediately upon request by Ozpak; and
- (c) if and when the full amount due to Ozpak in respect of the Goods has been received by Ozpak, any further Sale Proceeds may be retained by the Customer.
- 8.7 The Customer must immediately cease the resale of any Goods under clause 8.6 if:
- (a) Ozpak revokes any consent it has given to the Customer to resell the Goods under clause 8.6; or
- (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.
- 8.8 In the event that the Customer processes, comingles, transforms or otherwise deals with the Goods (or any portion of them) into or with any other goods, then the Customer must:
- (a) keep and maintain records in relation to the Goods which have been processed, comingled, transformed or similarly dealt with, including the goods to which they have been processed, comingled, transformed or similarly dealt with; and
- (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such Goods (and/or the other goods, as the case may be) on trust for Ozpak and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.
- 8.9 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by Ozpak, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to Ozpak, be held on trust for Ozpak by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- ## 9 PPSA
- 9.1 Words and expressions used in this clause 9 which are not defined in these Standard Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- 9.2 The Customer acknowledges that:
- (a) the Agreement for the supply of Goods is a security agreement for the purposes of the PPSA, under which the Customer grants Ozpak a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (**Account**) to secure all monies owing by the Customer to Ozpak from time to time;
- (b) the security interest in the Goods extends to any proceeds received by the Customer in respect of those Goods;
- (c) where Ozpak has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply;
- (d) Ozpak is not obliged to act in any way to dispose of or to retain any Goods which have been seized by Ozpak or any person nominated by Ozpak under its rights under the PPSA; and
- (e) any security interest granted under this Agreement or any Account is in addition to, and without limitation to, any other right or security interest arising under common law or statute, including any general or possessory lien.
- 9.3 Without limiting anything else in these Standard Terms, the Customer consents to Ozpak effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by, these Standard Terms, any Agreement or any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Standard Terms is perfected and remains continuously perfected, Ozpak's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 9.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Ozpak for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:
- (a) create and implement appropriate policies and systems to register a security interest in relation to the Goods where the Customer on sells the Goods to a third party;
- (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available; and
- (c) where the Customer is a trustee of a trust and that trust is not registered for an ABN, must not register an ABN without providing prior written notice to Ozpak.
- 9.5 The Customer must indemnify, and on demand reimburse, Ozpak for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of Ozpak's security interests.
- 9.6 The Customer must not:
- (a) change its name, address or contact details without providing prior written notice to Ozpak and must not

- register a financing change statement or a change demand; or
- (b) remove, or permit to be removed, any Goods to any place outside of Australia where those Goods have not been paid for in full,
- without Ozpak's prior written consent.
- 9.7 If any of the Goods are installed in, or affixed to, or become an accession to any other products or goods, the security interest created under these Standard Terms or otherwise under an Agreement continues in the accession in accordance with the PPSA.
- 9.8 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 9.9 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Ozpak has given prior written consent.
- 10 Liability**
- 10.1 If the Customer is a Consumer and Ozpak supplies PDH Goods or Services to the Customer, Ozpak acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by Ozpak and nothing in these Standard Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 10.2 If the Customer is a Consumer and any goods or services supplied by Ozpak to the Customer are non PDH Goods or Services, Ozpak's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Ozpak's discretion) to:
- (a) in the case of Goods:
- (i) the replacement of the Goods or the supply of equivalent goods;
- (ii) the repair of the Goods;
- (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 the Services again; or
- (ii) the payment of the cost of having the Services supplied again.
- 10.3 If the Customer makes a claim against Ozpak which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Ozpak expressly excludes all liability in respect of the Goods or Services supplied by Ozpak to the Customer.
- 10.4 In relation to the supply of Goods which are non PDH Goods or Services, if Ozpak is liable to indemnify the Customer under section 274 of the Australian Consumer Law, Ozpak's liability to the Customer is limited to an amount equal to the lower of:
- (a) the cost of replacing the Goods;
- (b) the cost of obtaining goods equivalent to the Goods; or
- (c) the cost of having the Goods repaired.
- 10.5 Subject always to the other terms of this clause 10 and the provisions of the Australian Consumer Law, Ozpak is not liable to the Customer for any damage to the Goods which is caused as a result of:
- (a) accident, misuse (including use for incorrect applications), incorrect installation, cleaning or maintenance, unauthorised modification, tampering or unauthorised repairs by any persons, exposure to corrosive conditions, adhesives or sealants;
- (b) damage to finishes which arise from installation or post installation use;
- (c) use in a manner for which the Goods are not specifically designed;
- (d) exposure to weather conditions, temperatures and other natural elements for which the Goods are not specifically designed; or
- (e) failure to observe any instructions or manuals provided to the Customer by Ozpak in relation to the care, cleaning or maintenance of the Goods.
- 10.6 Subject always to the other terms of this clause 10 and the provisions of the Australian Consumer Law and any other applicable law, the Customer acknowledges that Ozpak's total aggregate liability under an Agreement will in no circumstances exceed an amount equal to 100% of the amounts actually received by Ozpak from the Customer under that Agreement.
- 11 Intellectual Property**
- 11.1 The parties acknowledge and agree that as between Ozpak and the Customer all Intellectual Property Rights in the Goods and any material created as part of the Services vests in and exclusively belongs to and are irrevocably assigned to Ozpak and the Customer agrees that it must not infringe or use the Intellectual Property Rights of Ozpak which exist in the Goods or materials created as part of the Services without the prior consent of Ozpak.
- 11.2 The Customer must:
- (a) not make available for purchase, sell or promote any good which is a copy or imitation, in whole or in part, of any Good;
- (b) not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good without the prior written consent of Ozpak; and
- (c) only sell or promote the Goods using any trade mark, name, brand or other trade insignia of which the Customer is the legal and beneficial owner or where the Customer has been granted a licence by the relevant third party owner to sell or promote the Goods using the third party's trade mark, name, brand or other trade insignia. The Customer acknowledges that such ownership or licence (as the case may be) must continue as valid and effective at all times during any sale or promotion of the Goods and, upon request by Ozpak, the Customer must provide Ozpak with evidence satisfactory to Ozpak of the ownership or licence of any such trade mark, name, brand or other trade insignia.
- 11.3 The Customer grants to Ozpak a non-exclusive, royalty free licence during the term of each Agreement to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable Ozpak to supply the Goods or perform the Services.
- 11.4 The Customer represents and warrants to Ozpak that:
- (a) the Customer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use) all the Intellectual Property Rights in the Customer Background Materials; and
- (b) is entitled to grant the licence specified clause 11.3 to Ozpak.
- 12 Indemnity**
- 12.1 The Customer indemnifies Ozpak and holds Ozpak harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Ozpak incurs as a direct or indirect result of:
- (a) recovering any amounts the Customer owes to Ozpak (including any fees paid to a debt collector, mercantile agent or similar);
- (b) any breach of an Agreement (including but not limited to these Standard Terms or the Additional Terms) by the Customer;
- (c) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible;
- (d) any infringement or alleged infringement of Intellectual Property Rights owned or held by another party arising from the use of any Customer Background Materials or Constituent Materials;
- (e) the consumption or purported consumption by any person of any defective, contaminated or unsafe Goods to the extent that the Goods are defective, contaminated or unsafe because of any Constituent Materials;

- (f) any Constituent Materials that are used or relied upon by Ozpak to supply the Goods or perform the Services which:
  - (i) are not of a merchantable quality or fit to be used by Ozpak in supplying the Goods or performing the Services;
  - (ii) are defective or fail to meet any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars specified by Ozpak to the Customer;
  - (iii) contain incorrect, out of date or misleading information; or
  - (iv) otherwise are not reasonably suitable or adequate in order for Ozpak to supply the Goods or perform the Services in accordance with the Agreement and in accordance with best industry practices;
- (g) the Customer's or a third party's improper storage, handling, transport or supply of the Goods or Constituent Materials;
- (h) the Customer suffering an Insolvency Event; or
- (i) any negligent or wilful act or omission by the Customer or the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.

### 13 Notification of claims

- 13.1 The Customer shall notify Ozpak immediately if it becomes aware of:
- (a) any claim; or
  - (b) any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 13.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:
- (a) any claim; or
  - (b) any death, serious injury or serious illness,
- in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 13.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:
- (a) not, without Ozpak's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
  - (b) take all steps and do all things necessary to promptly pass on to Ozpak any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist Ozpak to comply with its obligations under the Australian Consumer Law;
  - (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Ozpak any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
  - (d) not agree to settle any claim made by a Consumer without the prior written consent of Ozpak.

### 14 No representations

The Customer acknowledges and agrees that:

- (a) it has not relied on any representations, inducements or statements made to it by Ozpak regarding the supply of the Goods or Services and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for; and
- (b) Ozpak's employees, contractors, officers and agents are not authorised to make any representations or warranties concerning the Goods or Services.

### 15 Specifications

- 15.1 If an Offer has been accepted by Ozpak, the Customer acknowledges that the Offer was accepted by Ozpak on the basis

of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer.

- 15.2 The Specifications are approximate only and Ozpak makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.
- 15.3 Where any Constituent Materials, instructions, or information in whatever form (including documents, specifications, designs, plans, processes, and data) are required to be provided by the Customer to Ozpak before Ozpak can proceed with or complete the provision of the Goods or Services such Constituent Materials, instructions or information must be supplied by the Customer to Ozpak within a reasonable time (as determined by Ozpak) so as to enable Ozpak to deliver the Goods or Services within any agreed time frame.
- 15.4 Ozpak may make changes to the specifications, dimensions, weights or other particulars of the Goods as may be required from time to time by law or any safety or manufacturing requirements.

### 16 Confidentiality

- 16.1 The Customer:
- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
  - (b) must keep confidential all Confidential Information; and
  - (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by Ozpak; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Ozpak.
- 16.2 The Customer must notify Ozpak immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

### 17 Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) regarding the Customer if the Customer is an individual, or the employees, contractors, officers and agents of the Customer if the Customer is an organisation, may be collected, held, used and disclosed by Ozpak for the purposes set out in Ozpak's privacy policy (which privacy policy is available on Ozpak's website or on request from Ozpak). The Customer consents, and where applicable will make all reasonable endeavours to have its employees, contractors, officers and agents consent, to Ozpak collecting, holding, using and disclosing any such personal information for all purposes specified in Ozpak's privacy policy.

### 18 Taxes

- (a) Unless otherwise expressly specified by Ozpak in an Agreement, all prices stated are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services and must immediately upon request by Ozpak provide Ozpak with evidence of payment of any Taxes.
- (b) If GST is payable on any supply made by Ozpak under an Agreement, the Customer must pay to Ozpak, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by an Agreement to reimburse or indemnify Ozpak for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Ozpak will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Ozpak in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

## 19 Insurance

- 19.1 Subject to clause 19.2, the Customer must, as a minimum and at its cost, maintain the following insurance policies with reputable insurers for as long as it has any Agreement with Ozpak:
- in-transit insurance to insure all Goods and Constituent Materials to be delivered:
    - by or on behalf of the Customer to Ozpak; or
    - by or on behalf of Ozpak to the Customer, as the case may be;
  - general property insurance covering all Goods and Constituent Materials for full replacement value and in respect of all Loss, including by fire, theft or spoilage while at Ozpak's premises or while otherwise at Ozpak's risk, control and/or possession; and
  - product liability insurance insuring the Customer and Ozpak against any future product liability claim in respect of the Goods or the Constituent Materials, to a minimum aggregate value of at least \$20million; and
  - any other insurance policy required to be held by Ozpak in accordance with the Additional Conditions or as otherwise agreed between Ozpak and the Customer in relation to a specific Agreement,
- (Insurance Policies).**
- 19.2 If the wording of an Insurance Policy is constructed on a claims made basis, the insurance must be maintained without interruption for a period of 7 years after the last delivery of any Goods by Ozpak to the Customer under an Agreement.
- 19.3 The Customer must give Ozpak a copy of the Insurance Policies or certificates of currency for each Insurance Policy on written request by Ozpak.
- 19.4 The Customer must comply with the terms of the Insurance Policies, and the Customer must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- 19.5 The Insurance Policies are primary and not secondary to the indemnities referred to in these Standard Terms, however, Ozpak is not obliged to make a claim or institute proceedings against any insurer under the Insurance Policies before enforcing any of its rights or remedies under the indemnities referred to in these Standard Terms, or generally.

## 20 Dispute Resolution

- 20.1 Except where interim or urgent interlocutory relief is sought, prior to the commencement of any legal proceedings, whether in a court or by way of arbitration, the parties agree to use reasonable endeavours to resolve a dispute in respect of any matter arising under an Agreement (**Dispute**) in accordance with this clause 20.
- 20.2 If a party considers that a Dispute exists, then that party must give written notice to the other party that it considers a Dispute exists specifying the Dispute, including any event, matter or omission that the party relies on as giving rise to the Dispute and a senior representative of each party must meet within 21 days of the date of the notice given under this clause for the purpose of seeking to resolve the Dispute (**Resolution Period**).
- 20.3 If the Dispute is not resolved by the disputing parties during the Resolution Period, then any of the disputing parties may refer the Dispute to mediation no later than 7 days after the end of the Resolution Period and any Dispute referred to mediation under this clause must be conducted in accordance with the Mediation Rules of Resolution Institute (ACN 008 651 232) and:
- be conducted by a mediator agreed on by the disputing parties; or
  - if the disputing parties are unable to agree on a mediator within 7 days of the date of the referral to mediation, be conducted by a mediator appointed by the then current chair of the Resolution Institute (ACN 008 651 232) following a request from any of the disputing parties.
- 20.4 The role of any mediator is to assist in negotiating a resolution of the Dispute within 21 days of their appointment (**Mediation Period**) and the cost of any mediator will be shared equally between each of the parties and each party will each bear their own costs of any mediation.
- 20.5 If the Dispute is not resolved within 21 days of the mediator's appointment, or any further time period agreed by the parties in writing, the mediation will cease and either Party may commence legal proceedings when the mediation ceases.

## 21 Force Majeure

- 21.1 Ozpak will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.
- 21.2 If a Force Majeure Event under clause 21.1 exceeds 20 Business Days, Ozpak may immediately terminate the Agreement by written notice to the Customer.

## 22 Termination

- 22.1 Without limiting Ozpak's other rights under these Standard Terms, Ozpak may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Customer if:
- the Customer fails to make any payment under the Agreement to Ozpak by the due date for that payment;
  - the Customer is the subject of an Insolvency Event;
  - the Customer has breached any term of the relevant Agreement (including these Standard Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days or receiving notice requiring the breach to be remedied; or
  - in accordance with clause 21.2.
- 22.2 On termination of an Agreement:
- the Customer must not sell or part with possession (other than as required under clause 22.2(b)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
  - the Customer must, at its cost immediately return to Ozpak all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional and advertising materials in relation to the Goods;
  - Ozpak may enter the premises of the Customer or any third party to repossess any Goods not returned under clause 22.2(b) and the Customer expressly authorises and grants Ozpak and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of such Goods; and
  - all monies owed by the Customer to Ozpak shall become immediately due and payable.
- 22.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

## 23 Cancellation

- 23.1 Without limiting clause 4.8(b), Ozpak may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where Ozpak believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that if Ozpak cancels an Agreement under this clause 23.1 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against Ozpak in respect of any cancellation pursuant to this clause 23.1.
- 23.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Ozpak and without prejudice to any other rights Ozpak may have, the Customer indemnifies Ozpak for any Loss incurred by Ozpak in connection with such cancellation.

## 24 Inconsistency

- 24.1 Unless otherwise specified in these Standard Terms, in the event of an inconsistency between any of the documents listed in clause 3.4, the following order of precedence shall apply to the extent of the inconsistency:
- the prices and quantity of Goods and/or Services set out in a Quote (if any);
  - the Additional Conditions;
  - these Standard Terms;
  - the Account Application;
  - any other terms of the Quote (if applicable); and
  - the Invoice.
- 24.2 These Standard Terms and the Additional Conditions shall prevail over any Customer terms and conditions, except to the

extent specifically agreed by Ozpak in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Ozpak if expressly agreed by Ozpak in writing.

## 25 Miscellaneous

25.1 In these Standard Terms and the Additional Conditions:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Standard Terms nor the Additional Conditions;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of, or the inclusion of the provision in, either of the documents listed in clause 3.1; and
- (g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

25.2 The Customer must maintain and keep current and complete records of the Goods which Ozpak has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by Ozpak), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from Ozpak, provide Ozpak with access to, or copies of, those records.

25.3 The Customer must not assign or otherwise deal with any of its rights or obligations under an Agreement without Ozpak's prior written consent. Ozpak may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under an Agreement (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of Ozpak acting reasonably, the assignment will not adversely affect the rights of the Customer.

25.4 For the purposes of clause 25.3, a Change in Control of the Customer shall be considered an assignment of the Customer's rights or obligations under each Agreement.

25.5 Ozpak may, to the extent permitted by law, vary these Standard Terms and / or the Additional Terms from time to time with the variation becoming effective as soon as Ozpak provides the Customer notice of the variation (**Variation Date**). Any variation to these Standard Terms or the Additional Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.

25.6 A failure to exercise or delay in exercising any right under an Agreement does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under an Agreement must be in writing and is only effective to the extent set out in that written waiver.

25.7 If any provision of these Standard Terms or the Additional Conditions is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Standard Terms or the Additional Conditions (as the case may be) without affecting the validity or enforceability of the remaining provisions.

25.8 Each Agreement is governed by the laws in force in Victoria, and the Customer and Ozpak submit to the non-exclusive jurisdiction of the courts of Victoria.

25.9 The termination or expiry of any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 19.2, 20, 22, 24 and 25.

25.10 Each party must:

- (a) do all acts necessary or desirable to give full effect to an Agreement; and
- (b) refrain from doing anything which might prevent full effect being given to an Agreement.

25.11 The relationship between the parties is and will remain that of independent contractors, and nothing in these Standard Terms, the Additional Conditions or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

25.12 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Account Application or, if none are specified, in any other part of the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by email one hour after the email (unless the sender knows that email has failed to send).