



Tetra Pak New Zealand Limited – Processing Standard purchasing conditions

1. Introduction

- 1.1 A Contract shall consist of these Purchasing Conditions and a Purchase Order. If there is any conflict between the provisions of a Purchase Order and these Purchasing Conditions the Purchase Order shall prevail to the extent of the conflict.
- 1.2 No other terms and conditions including, without limitation, any terms and conditions set out in the Supplier's invoices or other standard form documentation shall apply.

2. Quality assurance and inspections

- 2.1 The Supplier shall within two working days inform Tetra Pak in writing of any essential condition, which could have a negative effect on the Supplier's ability regarding the manufacturing and delivery of the Products and/or delivery of the Services, including the obligation to inform Tetra Pak without delay if defects are found in batches of the Products or materials.
- 2.2 The Supplier shall on Tetra Pak's request provide Tetra Pak with documentation containing relevant information in relation to the Products and Services (eg. test results, quality inspections etc).
- 2.3 Tetra Pak may at any reasonable time inspect the Supplier's production and test facilities which will or may be used in the performance of this Contract, and inspect and test material and workmanship related to the Products purchased hereunder. Tetra Pak shall give the Supplier reasonable prior notice of when such inspection will take place. All inspections and tests shall be performed in such a manner as neither to delay the Supplier's work unduly nor to cause unrestricted disclosure of the Supplier's confidential information.

3. Environment

- 3.1 The Supplier will avoid, or reduce to a minimum, any negative environmental effects in the manufacture and delivery of Products, and/or the delivery of Services. The Supplier will put use reasonable commercial efforts into following Tetra Pak's Environmental Guidelines and when possible use packaging material suitable for recycling or reutilisation.

4. Delivery

- 4.1 Unless otherwise specified, products will be delivered DDP as defined by the ICC INCOTERMS 2010, to a site as specified on the Purchase order.
- 4.2 A detailed packing notice must be sent with the goods containing the following particulars:
 - a) Tetra Pak's Purchase Order Number;
 - b) Number of and description of items dispatched;
 - c) Number of packages (count, volume and / or weight); and
 - d) Mode of transit, and name of the carrier.
- 4.3 Risk of and title to the Products shall pass to Tetra Pak on delivery.

4.4 Acceptance of all Products ordered is subject to examination by Tetra Pak on arrival at their destination, notwithstanding any prior payments. Rejected Products will be returned at the Supplier's risk freight forward.

4.5 If requested an order acknowledgement must be returned to Tetra Pak within two (2) days from the date on which Tetra Pak places the order.

5. Delay

5.1 If the Supplier fails to deliver any or all Products and/or Services by the agreed delivery date, the Supplier shall pay to Tetra Pak liquidated damages at the following rate: One per cent (1%) of the price of the Products in delay for every commenced week of delay, with a maximum limit of compensation of ten per cent (10%) of such price. Tetra Pak also has the right to cancel, in whole or in part, the delayed order or, in case the delay exceeds ten (10) weeks, to terminate this Contract with immediate effect.

6. Terms of payment

6.1 Invoices which do not state Tetra Pak's official Purchase Order number may be rejected and all invoices must be received promptly after despatch of the Products and/or delivery of the Services, otherwise payment will be delayed. Invoices are to be emailed to 254.accountspayable@ap.tetrapak.com

6.2 All statements of account to be received by the 2nd working day of each month to allow for payment as per agreed payment terms.

6.3 Unless otherwise provided in the Contract, the Price is fixed and includes packaging and labelling. The Price excludes GST which, if applicable, shall be payable by Tetra Pak. Tetra Pak must be notified before variations or additional costs are undertaken, and a further purchase order issued in respect of any orders already placed by Tetra Pak on the Supplier.

6.4 Tetra Pak shall pay the price according to the payment terms set out in the Purchase Order. The Supplier may invoice Tetra Pak on completion of delivery. Except as otherwise agreed, payment shall be made in NZ dollars as per agreed payment terms.

7. Warranty

7.1 The Supplier warrants that the Products shall be free from material defects in workmanship, materials and design, comply with all applicable laws and regulations, and have the properties and conforms to the specifications set out in the Contract or otherwise agreed to by the parties.

7.2 The Supplier warrants that the personnel performing the Services are well educated and trained and have sufficient experience for the work to be carried out.

7.3 In addition to any general duties which may be implied under the applicable law or any practice established by the parties among themselves, Supplier warrants and undertakes to Tetra Pak that at all times it will:

- a) use the degree of professional care and skill in performing the Services to be reasonably expected of an expert in the field of the Services;

- b) carry out the assignment conscientiously, always acting in the interests of Tetra Pak and adhering in particular to the time table for the performance and completion of the obligations of Tetra Pak/Customer
 - c) comply with the reasonable directions of Tetra Pak in performing the Services; and
 - d) procure that its employees, directors and/or officers will comply with all rules, regulation, security and office procedures of Tetra Pak/Customer.
- 7.4 The warranty period for each of the Products shall be twelve (12) months after the date on which the Equipment is put into commercial operation at the site (after Tests on Completion are completed), or eighteen (18) months after delivery, whichever occurs first. A new guarantee period of twelve (12) months starts for parts which have been repaired or replaced.
- 7.5 Upon written request by Tetra Pak, the Supplier undertakes to repair or replace any parts of the Products that, before the expiry of the warranty period, are defective as described in clause 7.1 due to reasons attributable directly to the Supplier. Such repair or replacement shall be effected within five (5) working days following Tetra Pak's request. Replaced parts shall become the Supplier's property. Tetra Pak accepts no liability for storage of such parts, and shall have the right to dispose of such as it wishes should the Supplier not have collected such material within one (1) month from its replacement.
- 7.6 The Supplier shall, at its own expense and within reasonable time upon request by Tetra Pak, rectify any material errors in the Services provided under this Agreement.
- 7.7 If the Supplier fails completely or in part to remedy a defect in the Products and/or Services within a reasonable time following Tetra Pak's request, Tetra Pak may, at its sole discretion, either remedy the defect by its own accord, at the cost of the Supplier, or claim a reasonable reduction of price.
- 7.8 The Supplier will indemnify Tetra Pak against any and all liability, loss, damage, costs and expenses (including legal expenses) which arise from any claim by any third party that Tetra Pak's, or Tetra Pak's customers', use of the Products, infringes any third party intellectual property right. Unless grossly negligent, the Supplier will not be liable for consequential damages.
- 7.9 The Supplier's warranty shall not cover defects caused by normal wear and tear, inadequate maintenance or faulty repair, failure to observe the operating instructions, building or assembly or modification work not undertaken with the consent of The Supplier, or resulting from other reasons beyond the Supplier's control.
- 7.10 Notwithstanding the provisions of Clauses 7.1-7.7, the following shall apply with respect to product liability.
- 7.11 Tetra Pak shall be liable for personal injury caused by the Products only if it is proved that such injury was caused by negligence on the part of Tetra Pak or others for whom Tetra Pak is responsible. Tetra Pak shall be liable for damage to property caused by the Products on the same conditions as for personal injury.
- 7.12 To the extent Tetra Pak might incur product liability towards any third party, having acquired Products from Tetra Pak, or towards the customers of any such third party, the Supplier shall defend, indemnify and hold Tetra Pak harmless with respect to such product liability.

8. Early termination


- 8.1 Without prejudice to any express provision for termination contained herein, this Contract may be terminated immediately in writing by a party in case of any material breach by the other party of any of its obligations under the Contract which is not remediable, or, if remediable, that other party has failed to remedy the breach within thirty (30) days of written notice requiring it to do so.
- 8.2 Either party shall have the right to terminate this Contract with immediate effect if the other party should enter into liquidation, either voluntary or compulsory, or become insolvent, or enter into composition or corporate reorganization proceedings or if execution be levied on any goods and effects of the other party or the other party should enter into receivership or bankruptcy.
- 8.3 Tetra Pak may also terminate the Contract if the legal structure or ownership of the Supplier has changed in such a way as to seriously affect the result that Tetra Pak reasonably expects from this Contract.

9. Documents and confidential information

- 9.1 A party (a receiving party) shall keep all information provided to it by the other party (a disclosing party) and identified as being confidential (including, without limitation, any specifications, plans, drawings, process information, patterns, designs or other materials or information) (**Confidential Information**) supplied by the disclosing party to the receiving party in connection with the Contract in good condition and such material must be returned to disclosing party on demand or on termination of the Contract for any reason.
- 9.2 Each party retains all rights to all documents (including all Confidential Information) provided to the other. The party receiving such documents shall not – without previous written consent of the other party – make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.
- 9.3 The receiving party shall not disclose confidential information provided by a disclosing party under this Contract even after the termination of the Contract.
- 9.4 This Section 9 shall not apply to documents and information shown to be in the public domain or lawfully brought to one party's knowledge by third parties or which must reasonably be disclosed by a party to its final customers.

10. Miscellaneous

- 10.1 Neither party may assign this Contract either in whole or in part the prior written consent of the other party.
- 10.2 Any waiver by either party of a breach of any provisions of this Contract shall not be considered as a waiver of any subsequent breach or any other provision of this Contract.
- 10.3 If any provision of this Contract is held to be invalid or unenforceable, in whole or in part, the validity of the other provisions of this Contract and the remainder of the provision in question shall not be affected thereby.

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- 10.4 No alteration or amendment to this Contract shall be valid unless such alteration or amendment is produced in writing and signed by the parties signing this Contract.
- 10.5 The Supplier shall not make any public statement or advertisement concerning the Contract, Tetra Pak and/or its customers without the prior written consent of Tetra Pak.
- 10.6 Without limiting the validity of any prior Confidentiality Agreement in place between the Parties, this Contract contains the entire understanding between the parties on its subject matter, and annuls and replaces any other agreements or understandings, whether written or oral, which may exist or have existed between the parties on the subject matter hereof.
- 10.7 Unless otherwise agreed in writing, the Contract shall be governed by the laws of New Zealand and the courts of New Zealand shall have exclusive jurisdiction.
- 10.8 If goods and services tax (**GST**) pursuant to the Goods and Services Tax Act 1985 is levied or imposed on or in respect of any supply made under or in connection with this Agreement, then the consideration provided for that supply is increased by the rate at which GST is levied or imposed. Where any consideration is increased under this clause the increased consideration is payable within 7 days of receipt of a valid GST invoice from the relevant party.