

# General Terms and Conditions for Genuine Parts On-time – NEW ZEALAND



## 1. Preamble

These General Terms and Conditions for Genuine Parts on Time (the “General Terms and Conditions”) apply to the sale of Tetra Pak Parts, Consumables, Upgrade Kits and Maintenance Units (as such terms are defined in Clause 2 below) from Tetra Pak to the Customer, and are applicable to all Orders (as defined in Clause 2 below) channelled through Parts Supply Chain for such Tetra Pak Parts,, Consumables, Upgrade Kits and Maintenance Units.

## 2. Definitions

In these General Terms and Conditions the following terms shall have the meanings defined below:

“Agreement”	means the agreement between Tetra Pak and the Customer comprising these General Terms and Conditions, the Order Confirmation;
“Consumable(s)”	means nondurable soft goods such as adhesives, lubricants, chemicals and secondary packaging material sold by Tetra Pak;
“Customer”	means the legal person who places an Order;
“eBusiness/ePart(s)”	Tetra Pak’s internet customer portal through which an Order may be made;
“Maintenance Unit(s)”	means a module or modules of Tetra Pak Parts as applicable;
“Parts Price List”	means the Tetra Pak lists of prices for the Parts and Consumables in force from time to time and available from Tetra Pak’s office or through eBusiness/eParts;
“Order”	means each individual order for a Part or Consumable placed by the Customer with Tetra Pak;
“Order Confirmation”	means a written confirmation of an Order issued by Tetra Pak in accordance with Clause 5.3;
“Part(s)”	means Tetra Pak Part(s), Upgrade Kits and/or Maintenance Unit(s);
“Software”	means any software that is proprietary to or licensed to Tetra Pak that is incorporated in a Part;
“Tetra Pak”	means the Tetra Pak legal entity with which an Order has been placed;
“Tetra Pak Part(s)”	means an individual Tetra Pak item or article as the case may be including Upgrade Kits however not optional kits and mandatory kits; and
“Upgrade Kit(s)”	means the set of Parts sold and distributed to enhance efficiency of already delivered machines or to meet similar objectives.

### 3. Customer use and Installation of Parts and Consumables

- 3.1 Customer shall use Parts and Consumables only for the purpose for which they have been designed by Tetra Pak (or the relevant manufacturer if Tetra Pak is not the manufacturer of the Part or the Consumable).
- 3.2 The Customer shall be solely responsible for the installation and maintenance of each Part unless Tetra Pak has assumed responsibility for such installation and maintenance in a separate written agreement.

### 4. Price and Payment terms

- 4.1 The prices for Tetra Pak Parts are set out in the Parts Price List. Prices for Parts that are not included in the Price List are quoted by Tetra Pak upon request and will remain valid for thirty (30) days from the date of the quote unless otherwise agreed by Tetra Pak in writing. The prices for Parts in the Price List include the cost for packaging but are exclusive of transportation costs and conversion to local currencies, if applicable.
- 4.2 The price for a reconditioned Maintenance Unit in the Price List takes into account cost savings realized due to the Customer returning an equivalent Maintenance Unit ("Returned Maintenance Unit") to Tetra Pak for future reconditioning. Title to each Returned Maintenance Unit by the Customer will be transferred to Tetra Pak upon the Customer's receipt of the reconditioned Maintenance Unit. If a reconditioned Maintenance Unit is shipped/delivered by Tetra Pak in accordance with the Order Confirmation but the Customer's Returned Maintenance Unit is either: (a) not shipped to Tetra Pak within four (4) weeks from the date of shipment/receipt by Tetra Pak of the replacement Maintenance Unit; or (b) damaged beyond normal wear and tear; Tetra Pak has the right to charge the Customer for, and the Customer shall pay to Tetra Pak, the full price of a Maintenance Unit or equivalent Parts/Parts to obtain a new unit (without the factored-in cost savings for the return of a Returned Maintenance Unit), in accordance with the Price List.
- 4.3 The Customer shall pay the applicable price for all Parts and Consumables in accordance with the payment terms specified on the invoice. Unless otherwise specified on the invoice, the payment term is thirty (30) days after the invoice date.
- 4.4 Customer shall pay all invoices in full without any deduction or setoff by the Customer. Any amount which is owed to Tetra Pak under an invoice that remains unpaid on the corresponding due date will be subject, from the due date until the date of payment, to interest for late payment at the rate prescribed by applicable law.
- 4.5 If the Customer fails to pay any amount when due, Tetra Pak shall be entitled to suspend and withhold its performance of any obligations it may have under the relevant Order Confirmation and this Agreement without prejudice to any of Tetra Pak's other rights until such time as the Customer pays the due amount in full, including any interest and late payment fees. Title to the Parts and Consumables shall pass to the Customer when such Parts and Consumables are fully paid.

If the Customer's credit rating deteriorates or if there is any indication in Tetra Pak's opinion that it may do so, Tetra Pak will be entitled, in its sole discretion, to: (a) demand prepayment by Customer or the provision of a guarantee or security deposit by Customer; or (b) to hold shipment until a time when Tetra Pak is satisfied that the customer's credit rating improves or Tetra Pak is satisfied that it will improve. Customer shall not have the right to set-off any claims against counter-claims unless such counterclaims are recognized by a final and binding judgment or have been acknowledged by Tetra Pak.

## 5. Order Placement

- 5.1 Customer shall order Parts and Consumables by e-Business/eParts, e-mail, fax, letter, or telephone provided that any Orders in which an Express (as defined in Clause 6.1 (c) below) delivery option is requested shall always be confirmed by telephone. In case of phone orders Tetra Pak will not be liable for any wrong reference or amount. Phone orders will be made under the responsibility of the Customer, the Customer expressly accept the validity of the order phone being binding on both parties, from the moment of its realization.
- 5.2 Customer shall ensure that all Orders contain the following information: purchase order number, Tetra Pak Part number(s), quantity, requested date of delivery and delivery option, and if applicable, any request for a single and complete delivery (i.e. a request for no partial delivery).
- 5.3 Upon receipt of each Order, provided that Tetra Pak accepts the Order, Tetra Pak will provide the Customer with the Order Confirmation containing the following information; the Tetra Pak Part number(s) ordered, quantity, price and generally also the scheduled dispatch date or estimated delivery date and delivery option. The parties agree that the Order Confirmation together with the Agreement will be deemed to set out the definitive statement of the terms agreed by the parties in relation to any corresponding Order. Tetra Pak hereby rejects any different terms proposed by the Customer including any terms and conditions attached to or sent with the Order, and in the event of any conflict between the Order and the Agreement, the Agreement shall prevail.
- 5.4 A binding agreement between the parties shall only come into effect if Tetra Pak accepts the Order by way of an Order Confirmation. An Order placed by the Customer will be deemed to be a legally binding offer to enter into a sales agreement.

## 6. Delivery Options; Terms of delivery

- 6.1 There are three delivery options for ordered Parts and Consumables: Planned, Priority and Express, as described below.

### **Planned**

This option is for all scheduled, non-urgent Parts and Consumables and allows Tetra Pak to optimize logistics and pass the savings on to its customers in the form of a discount of 3% from the price in the Price List. The Customer should allow for a minimum of 4 (four) weeks lead time for delivery from the date that the Order Confirmation is issued.

### **Priority**

This option generally provides same-day dispatch service for Order Confirmations issued before (16:00 hours), [NZST] Monday to Friday. Order Confirmations issued outside these hours will generally be dispatched next working day. The consignment will generally arrive 3 to 5 working days, as per contracted courier delivery Schedule

### **Express**

This option provides delivery through a selection of the fastest practicable route available through the selected transportation provider and handling of the Parts and Consumables outside of the normal supply chain.

Customer shall pay to Tetra Pak an express fee of \$490 NZD (four hundred and ninety NZD) and any additional freight surcharges from any transportation company used ("Express Fee")

The Customer is required to call Tetra Pak directly to place an Order requesting an

Express delivery. Having received the notice, Tetra Pak shall inform the Customer whether the deadline can be met.

Tetra Pak will, at its sole discretion, consolidate deliveries to the Customer's advantage, wherever practicable. However, unless a single and complete delivery is specifically requested by the Customer, Tetra Pak will make partial delivery of any Parts or Consumables available as close as reasonably practicable to the requested delivery date. Remaining Parts and Consumables will be dispatched for delivery when available. In any event, the Customer shall pay the costs for each delivery in accordance with the selected delivery option.

- 6.2 Should certain Parts and Consumables in any Order Confirmation not be available in stock at the time of the scheduled dispatch information about the estimated date of delivery will be accessible through eBusiness.
- 6.3 Parts will be delivered to the Customer in accordance with 'DAP' (Incoterms 2010), unless otherwise specified in the order confirmation, and using the delivery option of 'Planned', 'Priority' or 'Express'. The freight/transport charges will be invoiced at, and Customer shall pay, the price communicated by Tetra Pak. If the Customer does not select a delivery option, Parts will be delivered and invoiced as Planned Orders.
- 6.4 Tetra Pak and the Customer agree that each notice of receipt issued by the delivery carrier and signed by the Customer or any of its representatives upon delivery of the Parts or Consumables shall be deemed to be valid and binding proof of receipt of the Part or Consumables specified in the Order Confirmation by the Customer.
- 6.5 If the Customer fails to accept delivery of any Parts or Consumables delivered in accordance with the Agreement or the Parts or Consumables cannot be delivered due to any cause not attributable to Tetra Pak, the Customer shall be liable for all costs incurred by Tetra Pak and the Customer in connection with such failure (including but not limited to the return of such Parts to Tetra Pak).

## 7. Cancellation of order

Unless otherwise indicated at the time of Order, an Order for Parts or Consumables may be cancelled by the Customer not less than 3 (three) working days before the scheduled date of dispatch communicated by Tetra Pak in the Order Confirmation pursuant to Clause 5.3 above or by Tetra Pak within the same time limit in case of shortage of Parts or Consumables to safeguard equitable allocation.

## 8. Return of Parts

- 8.1 Unless otherwise indicated at the time of Order, within 3 (three) months from and including the date of delivery of a Part, the Customer may return a part supplied by Tetra Pak Parts Supply Chain. The Return Parts sourced outside of Tetra Pak Supply Chain will be assessed on case by case basis. A restocking fee of \$80 NZD (eighty NZ Dollars) to cover costs linked to such return (including but not limited to the costs of transportation and insurance) shall be paid by the Customer.
- 8.2 Any returned Part must not have been used and must be in the same condition as at the time of delivery to the Customer (which generally means in an "as new" condition) in order to be accepted by Tetra Pak. Parts will only be accepted for return if the original primary packaging is intact. Return of Parts that are ordered by length (cables, hoses etc) will generally not be accepted.
- 8.3 Prior to returning any Part, the Customer shall obtain a written approval from Tetra Pak. The returned Parts must be well marked with "Return" and the return order number as provided by Tetra Pak to the Customer. Tetra Pak will arrange for transportation from the Customer but the Customer is responsible for that the

returned Parts are properly packed.

- 8.4 The price actually paid by the Customer for any returned Parts (excluding all other costs such as freight) meeting the conditions set forth under Clauses 8.1 - 8.3 will be refunded to the Customer after the setoff of any unpaid costs to be paid by the Customer under Clause 8.1.

## 9. Repurchase of Parts

If Customer wishes to return any Parts other than in accordance with Clause 8, Customer must contact Tetra Pak to find out if such Parts can be returned. Such requests will be handled by Tetra Pak on a case by case basis, and Tetra Pak may, in its sole discretion, refuse to accept such return or may impose conditions to such acceptance.

## 10. Warranty

- 10.1 Tetra Pak warrants that Parts and Consumables delivered hereunder shall be fit for the purpose indicated in Clause 3.1 and shall be free from material defects in workmanship, materials and design ("Defect"). This warranty is instead of and replaces and revokes any other warranties, implied by law or otherwise, including, but not limited to, any warranty of fitness for any purpose not specified in Clause 3.1 which warranties are expressly disclaimed by Tetra Pak.
- 10.2 The warranty set out in Clause 10.1 above is granted for a period of twelve (12) months from the shipment/receipt date of the Part and Consumable provided that for Parts that have a specific change interval as identified in Tetra Pak's global maintenance guidelines ("Change Interval Parts"), the warranty set out in Clause 10.1 above is granted for the specified lifetime of the Change Interval Part in Tetra Pak's maintenance system or a period of twelve (12) months from the effective delivery date of the Change Interval Part, whichever is shorter.
- 10.3 Subject to Clauses 10.5 and 10.6, for any Part or Consumable that has a Defect within the warranty period set forth in Clause 10.2 ("Defective Part") Tetra Pak shall, at its sole option, either:
  - repair or replace any Defective Part or Consumable; or
  - at the Customer's option issue a refund or a credit note to the Customer of the amount paid for the Defective Part or Consumable (provided that for Change Interval Parts the amount of the refund or credit note will be limited to the proportion of the amount paid for the Defective Part that corresponds to the remainder of the lifetime of the Change Interval Part specified in Tetra Pak's maintenance guidelines at the time when the Defect is notified to Tetra Pak);provided in each case that the amount paid by the Customer for an individual Defective Part/Consumable or for multiple claims for Defective Parts/Consumables arising from the same Defect exceeds \$85 NZD (eighty five NZ Dollars).
- 10.4 Parts and Consumables replaced or repaired by Tetra Pak under Clause 10.3 will be subject to the remainder of the warranty period as set out above under Clause 10.2 that applied to the Defective Part and Consumable. Upon request from Tetra Pak, the Customer shall return any Defective Part or Consumable to Tetra Pak. Any Software license will terminate upon issue of a refund or a credit note pursuant to sub-Clause 10.3 (b).
- 10.5 Tetra Pak shall have no liability for any Defect to the extent caused by any of the following:
  - ordinary wear and tear;
  - use of any Part and Consumable other than for intended use;



use of any Part and Consumable in combination with equipment not supplied or approved in writing by Tetra Pak (such approval not to be unreasonably withheld); combined use of Parts or Consumables with parts not supplied or approved in writing by Tetra Pak (such approval not to be unreasonably withheld); materials or information provided by, or use of a design stipulated or specified by, the Customer;

failure by the Customer to observe instructions for the operation, storage, maintenance, cleaning, replacement or repair of the Parts, Consumables and the equipment contained in Tetra Pak's maintenance system including use of cleansing liquids, oils, lubricants, adhesives, greases other consumables, materials and products not supplied or approved by Tetra Pak;

failure to use properly trained staff to operate, maintain, clean, replace or repair the equipment or Parts therein as outlined in Tetra Pak's maintenance system;

any alteration of Parts or Consumables or rebuilding of the Parts or its underlying equipment made without Tetra Pak's prior written approval (not to be unreasonably withheld);

use of any Software (as defined in Clause 12) other than in accordance with applicable specifications and documentation; or

use of any Software in combination with software not provided by Tetra Pak or not certified in writing by Tetra Pak for use with the Software.

In order to prove compliance with the conditions of this Clause 10, the Customer is advised to keep, as a minimum, accurate records of all maintenance, repair and service performed on the Parts and any underlying equipment.

- 10.6 Tetra Pak makes no promise or representation that the Parts or Consumables shall conform to any law, statute, ordinance, regulation, code or standard ("Laws and Standards") unless otherwise explicitly specified. Customer acknowledges that the use, handling, processing, transportation, storage, disposal and sale ("Use") of Parts and Consumables may be subject to requirements or limitations under Laws and Standards and shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with the intended Use of the Parts and Consumables; and (ii) obtaining all necessary approvals, permits or clearances for such Use.
- 10.7 All Parts and Consumables subject of any claim should be kept, available on reasonable request for investigation, at the Customer's premises for a minimum of two (2) months or until Tetra Pak confirms the final outcome of the claim, whichever comes later.
- 10.8 The warranty set forth in this Clause 10 is given in lieu of and excludes all other warranties, conditions or liabilities implied by law or otherwise, save for those which cannot lawfully be restricted or excluded. For the avoidance of doubt, Tetra Pak does not warrant that the use of any Software (as defined in Clause 12) will be free from minor defects or that such minor defects will be corrected by Tetra Pak.
- 10.9 Tetra Pak makes no promise or representation that the Parts or Consumables shall conform to any law, statute, ordinance, regulation, code or standard ("Laws and Standards") unless otherwise explicitly specified. Customer acknowledges that the use, handling, processing, transportation, storage, disposal and sale ("Use") of Parts and Consumables may be subject to requirements or limitations under Laws and Standards and shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with the intended Use of the Parts and Consumables; and (ii) obtaining all necessary approvals, permits or clearances for such Use.
- 10.10 All Parts and Consumables subject of any claim should be kept, available on reasonable request for investigation, at the Customer's premises for a minimum of two (2) months or until Tetra Pak confirms the final outcome of the claim, whichever comes later.

10.11 The warranty set forth in this Clause 10 is given in lieu of and excludes all other warranties, conditions or liabilities implied by law or otherwise, save for those which cannot lawfully be restricted or excluded. For the avoidance of doubt, Tetra Pak does not warrant that the use of any Software (as defined in Clause 12) will be free from minor defects or that such minor defects will be corrected by Tetra Pak.

## **11. Claims procedure for Parts and Consumables**

- 11.1 The Customer shall carry out its production and receipt of goods in such a way as to immediately discover any Defect in the Parts and Consumables that can reasonably be discovered during its production.
- 11.2 Customer shall notify Tetra Pak in writing of any Defect without undue delay and no later than ten (10) days after the Defect is or ought reasonably to have been discovered. Such notice must contain a reasonably detailed description of the alleged Defect. If the Customer fails to notify Tetra Pak within this time limit the warranty set out in Clause 10.1 will not apply.
- 11.3 Tetra Pak shall upon the receipt of the notice referred to in Clause 11.2 examine if and to what extent the Part or Consumable is Defective and whether or not the claim shall be approved. The Customer will provide all reasonable co-operation to Tetra Pak during the course of such examination and the Customer will reasonably co-operate with Tetra Pak in making any claim to Tetra Pak's insurance company or suppliers.
- 11.4 Notwithstanding Clause 11.2, if a claim for a Defect relates to transportation damage, Customer shall notify such damage or loss to Tetra Pak immediately on the consignment note and if the Customer fails to do so the warranty set out in Clause 10.1 will not apply.
- 11.5 Customer shall comply with any instructions issued by Tetra Pak on how to handle returns of Defective Parts and Consumables or that have been incorrectly delivered.
- 11.6 In the event that Tetra Pak provides replacement of a Defective Part or Consumable, delivery shall be made at Tetra Pak's cost using the Planned delivery option. Tetra Pak will have no obligation to cover additional transport costs to speed up replacement delivery.

## **12. Software; IT System**

If any Software is provided by Tetra Pak to be used in any Part, Tetra Pak hereby grants to Customer (or will procure that any relevant third party licensor will grant to Customer) a non-exclusive license to use the Software for the sole purpose of using the Part for the purpose for which it has been designed. Customer shall enter into any further

- 12.1 documentation required by any licensor for the use of any Software developed by the licensor and shall comply with such terms. No title or ownership to the Software is transferred to Customer. Customer will only obtain title to any media on which Software is recorded but not to the Software itself. The source code is not licensed to the Customer and Tetra Pak or its licensors retain all rights in such source code.
- 12.2 The Customer will not have the right to modify, adapt or enhance, reverse engineer, translate, disassemble or decompile the Software except to the extent that such right is mandatory and may not be excluded under applicable law. The Customer shall be responsible for all costs of operation and maintenance of the Software.
- 12.3 Customer shall not alter or remove any copyright, trademark or other proprietary notices contained in the Software. Customer shall not assign, sub-license, transfer, resell, rent, lease, loan, distribute, network or otherwise dispose of the Software or create or have created derivative works based on the Software.

- 12.4 Customer shall treat the Software (including the object code, documentation, specifications, logic, and design, and any modifications or enhancements, or corrections thereof) as Tetra Pak Confidential Information.
- 12.5 Upon termination of the Software license for any reason, the Customer shall discontinue the use of the Software and promptly return to Tetra Pak all Software, code, documentation and materials (and any copies thereof) in its possession and delete any copies of the same from the Customer's computers and data storage devices and confirm to Tetra Pak that it has done so. If Customer fails to promptly return the Software, Tetra Pak shall have the right to enter Customers' premises and remove the Software exercising reasonable care in such removal.
- 12.6 If the Customer uses e-Business/eParts or any other Tetra Pak internet or other IT system in connection with the ordering of Parts ("IT System"), the Customer shall comply with any terms and conditions for using such IT System. Tetra Pak does not represent or warrant that access to such IT System will be uninterrupted or error free and Tetra Pak shall not be responsible for the loss of any data transmitted to or from such IT System.

### **13. Intellectual Property Rights**

- 13.1 Any intellectual property rights, including but not limited to patents, trademarks, industrial designs, copyrights, rights relating to the protection of trade secrets and confidential information ("Intellectual Property Rights") or any technical information, including but not limited to software, specifications, drawings, documentation, ideas, knowledge or data ("Technical Information") provided directly or indirectly by Tetra Pak may only be used by Customer for the purpose of this Agreement.
- 13.2 No ownership, interest in or other rights to Intellectual Property Rights or Technical Information of Tetra Pak are assigned or granted to Customer unless specifically provided in this Agreement.

### **14. Confidential Information**

- 14.1 Prior to and during the term of the Agreement, either party may disclose to the other party information which is confidential or proprietary to it including, by way of example but not by way of limitation, confidential business, financial or technical information ("Confidential Information"). A party receiving Confidential Information (the "Receiving Party") shall treat any Confidential Information that it receives from the other party (the "Disclosing Party") confidential and shall not disclose it to any third party in whole or in part, or use such information other than for the purposes for which such Confidential Information has been disclosed. The foregoing restriction will not apply to: (a) information which is or comes into the public domain through no fault of the Receiving Party; (b) information that the Receiving Party can show was known to the Receiving Party prior to the disclosure; and (c) information that the Receiving Party can provide evidence was independently developed by the Receiving Party without the benefit of the Confidential Information of the Disclosing Party.
- 14.2 Notwithstanding Clause 14.1, the Receiving Party will be permitted to disclose Confidential Information of the Disclosing Party: (a) to any company in the same group of companies as the Receiving Party subject to the same duties of confidentiality; (b) to its professional advisers; (c) to any sub-contractors engaged in the performance of its obligations under this Agreement subject to the same restrictions of confidentiality; and/or (d) if it has been ordered to disclose Confidential Information by a competent court or authority provided that it shall immediately notify the Disclosing Party of such disclosure, use reasonable efforts to limit the extent of the disclosure, and shall inform the court or competent authority of the rights of the Disclosing Party in the Confidential Information.



- 14.3 The parties agree to treat the Agreement as Confidential Information.
- 14.4 The provisions of this Clause 14 shall survive the termination or expiration of the Agreement for a period of five (5) years.

## **15. Limitation of liability**

- 15.1 Notwithstanding anything to the contrary, Tetra Pak will not be liable for any indirect, special, punitive, consequential or incidental damages (including but not limited to loss of production, loss of revenue, losses caused by the downtime of any IT System or any electronic communication system, loss of profit, loss of agreements or damages payable by the Customer to a third party, loss of information or data, loss of goodwill, costs of disassembly or reassembly of equipment, systems or structures or any other indirect or consequential losses, costs or damages) arising out of or related to the Agreement whether or not Tetra Pak has knowledge of the possibility of any such damages, whether contractual or non-contractual.
- 15.2 Neither Tetra Pak, its affiliates nor their third party licensors guarantee the adequacy, accuracy, timeliness or completeness of any IT System or any component thereof or any communications including electronic communications. Neither Tetra Pak, its affiliates nor their third party licensors will be subject to any damages or liability for any errors, interruptions, omissions or delays caused by the IT System or any electronic communications system.
- 15.3 Subject to Clause 15.1 and 15.2 above, Tetra Pak's maximum cumulative liability arising out of or connection with the Agreement whether contractual or non-contractual will be limited to the higher of NZD \$8200 per Order Confirmation or series of related Order Confirmations or, if higher, to the Price actually paid by the Customer to Tetra Pak for the Part or Consumable that caused the damage. This limitation applies for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorneys' fees) arising out of this Agreement from any cause or causes whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.
- 15.4 The limitations on Tetra Pak's liability set out in the Agreement (in particular in these General Terms and Conditions) shall not apply in case Tetra Pak's non-performance of its obligations is the result of gross negligence or if such limitations are found to be invalid under the applicable law. Any limitations shall further not affect Tetra Pak's liability for personal injury, which shall be determined in accordance with the applicable law. For the purpose of this Clause 15, the term "Tetra Pak" shall include all affiliates of Tetra Pak.

## **16. Force Majeure**

Either party will be entitled to suspend performance hereunder (except for any obligation to pay a sum of money) to the extent that such performance is impeded or made unreasonably onerous by any circumstances beyond its reasonable control including but not limited to industrial disputes, fire, volcanic eruptions, war (whether declared or undeclared), terrorism, epidemics, severe weather, flood, military mobilization, insurrection, mass protests, requisition, seizure, embargo, export control regulations, government or judicial acts, restrictions in the use of power and defects and delays in deliveries by sub-contractors due to any such circumstance referred to in this Clause 16. A party invoking this provision shall notify the other party as soon as reasonably practicable of the circumstances affecting it and will use reasonable endeavours to mitigate the effect of such circumstances. If this provision is invoked for more than three (3) consecutive months, either party may cancel immediately any pending Order Confirmation affected by the force majeure event under the Agreement by providing written notice to the other party without being held liable for any damages linked to such cancellation.

## 17. Notices

- 17.1 All notices required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered by personal in-hand delivery, sent by facsimile transmission, or sent prepaid by recognised delivery .
- 17.2 Such notices shall be deemed to have been given when delivered in the case of in-hand delivery, on the date shown by a facsimile transmission report or confirmation in the case of successfully completed facsimile transmission, and on the date of delivery in the case of delivery service.


## 18. Taxes, Duties and Export Control

- 18.1 Customer will be liable for and pay all stamp duties attributable to this Agreement, and will be liable for and pay, or reimburse Tetra Pak for all VAT, sales taxes, municipal taxes, bank transaction tax, levies, customs, duties, and other similar taxes and charges imposed by any relevant country or any of its political subdivisions that apply to the Parts and Consumables provided under this Agreement.
- 18.2 Except as specifically provided otherwise, all withholding taxes are for the account of Customer. Payment of Tetra Pak's invoices will be without reduction for any taxes, including withholding taxes, or similar charges which are to be borne by the Customer.
- 18.3 The Customer undertakes that no Parts or Consumables will be sold, supplied, transferred or exported, directly or indirectly by the Customer, its agents or affiliates to any embargoed or sanctioned country or to any person, entity or body if this is prohibited by economic or financial sanctions or trade embargoes imposed, administrated or enforced by the United Nations, the United States of America, the European Union and/or any other country's applicable export control laws unless all necessary authorisations have been granted and that such goods are only used for their intended purpose under this Agreement.

## 19. General Clauses

- 19.1 The Customer and Tetra Pak are each independent of the other and nothing in this Agreement is intended, or shall be deemed, to create a partnership or joint venture of the Parties.
- 19.2 Except as provided in the Clause 15 (Limitations of Liability), the provisions of this Agreement are for the benefit of the Parties hereto and not for any other or third party.
- 19.3 The language of this Agreement, and all documents, materials and training, if any, to be supplied by Tetra Pak under this Agreement shall be English.
- 19.4 Article and Article headings are for convenience and shall not be given effect in interpretation of this Agreement.

The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous communications, representations and/or agreements with respect to its subject matter between the parties whether oral or in writing. Tetra Pak will not be bound by any statements made by any Tetra Pak representative or appearing in any printed material or in eBusiness, which are not also stated herein and the Customer acknowledges that it has not relied on any such

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- 19.5 statement in entering into the Agreement. No addition to or modification of any provision of the Agreement will be binding upon either party unless made in writing and signed by its duly authorized representatives. No course of dealing, trade usage or course of performance will be relevant to explain or supplement any term in the Agreement. Tetra Pak rejects any terms and conditions presented by the Customer in Orders or elsewhere and the Customer confirms that such terms and conditions are null and void.
- 19.6 If any provision of the Agreement is found to be illegal, invalid or unenforceable by operation of law, such provision will be adjusted: (a) only to such extent that it will no longer be found to be illegal, invalid or unenforceable; and (b) to give effect to the original intent of the parties to the maximum extent possible; and (c) in such a way as to ensure that all other provisions of the Agreement will not be affected and remain in full force and effect.
- 19.7 Except as otherwise provided in these General Terms and Conditions, the action or failure to act by Customer or by Tetra Pak to enforce any one or all of its rights will not act as a waiver or variation of such right nor be deemed to constitute acceptance of a breach of any of the provisions of the Agreement.
- 19.8 Neither party will assign or transfer any benefit or obligation hereunder without the prior written consent of the other party which will not be unreasonably withheld. Notwithstanding the foregoing, Tetra Pak may assign or transfer any benefit or obligation hereunder to any affiliated or associated company without the prior consent of Customer, provided however that Tetra Pak shall remain responsible for the proper fulfilment of its duties as agreed.
- 19.9 Any provision of the Agreement which contemplates performance after termination or expiration of the Agreement will survive and remain in full force and effect. All provisions will survive the expiration or termination of the Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein.
- 19.10 Each party warrants that it is duly represented and has the authority to enter into the Agreement.

## **20. Governing Law and Dispute resolution**

- 20.1 All disputes arising hereunder and over any non-contractual or other obligations arising out of or in connection with the Agreement shall be finally settled under the NZIAC Rules of Arbitration. Notwithstanding the foregoing, nothing in this clause will restrict Tetra Pak from bringing any action against the Customer in the Customer's place of domicile or before any other competent court whether concurrently or otherwise.
- 20.2 This Agreement shall be governed in accordance with the laws of New Zealand, and the parties shall submit to the non-exclusive jurisdiction of the courts of New Zealand. For the avoidance of doubt, The 1980 Vienna Convention on the International Sale of Goods will not apply.