



Terms of Trade

Technical Service – New Zealand

2014

These terms are effective from the date of the Quote and/or Order Confirmation and are between Tetra Pak New Zealand Limited (Company No 559009) of Waikato Innovation Park, Ruakura Lane, Hamilton 3216 New Zealand (“Tetra Pak”) and the Customer named in the Quote and/or Order Confirmation (“Customer”).

1 Application

These Terms and Conditions apply to the services described in the Technical Service Quotation (the Quote) and as described in a Tetra Pak service confirmation order if applicable (the Services). Tetra Pak hereby rejects any different terms proposed by Customer, including those contained in any purchase order or in any other writing not expressly incorporated in these Terms.

2 General Customer Obligations

2.1 Customer shall provide Tetra Pak with all information regarding its premises, equipment, operations, software and internal processes that Tetra Pak considers to be reasonably necessary for Tetra Pak to perform the Services. Customer represents and warrants that all such information provided to Tetra Pak is true, accurate and complete. Tetra Pak is not required to verify such information and is entitled to rely on such information in providing the Services to Customer.

2.2 Customer shall grant Tetra Pak such access free of charge to Customer's premises, equipment, software and internal processes as required by Tetra Pak in relation to the performance of the Services. Customer shall ensure that its personnel cooperate with Tetra Pak and are present to the extent required by Tetra Pak during the performance of the Services.

2.3 Customer shall supply, without charge to Tetra Pak, all items: (a) that are specified in any Quote or Tetra Pak service confirmation order as appropriate; and (b) any other items that Tetra Pak is not required to provide under Quote and which are required for the performance of the Services.

2.4 Customer undertakes that no Parts supplied by Tetra Pak will be sold, supplied, transferred or exported, directly or indirectly by 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 embargos imposed, administered or enforced by the United Nations, 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 those Parts are only used for their intended purpose pursuant to the Quote.

3 Safety and Security

3.1 Customer shall provide to Tetra Pak and Tetra Pak shall comply with all necessary site instructions regarding security, safety and emergency procedures at Customer's site.

3.2 If any Customer representative is required to attend a Tetra Pak site in connection with the Services, Customer shall ensure that such representative complies with all necessary instructions regarding security, safety and emergency procedures at Tetra Pak's site.

4 Price and Payment

4.1 Customer shall pay the Price strictly in accordance with the payment terms set out in the invoice issued by Tetra Pak.

4.2 If Customer fails to pay any amount when due, in addition to the rights set out in Clause 11 hereof, Tetra Pak will be entitled to suspend and withhold performance of any obligation it may have under the Quote until such date as Customer pays the amount due.

4.3 Any amount unpaid by the Customer by the due date will be subject from the due date to the date of payment, to interest for late payment at the cash rate published by the Reserve Bank of New Zealand plus 3.5%.

5 Warranty and Claims

5.1 Tetra Pak warrants that it will perform the Services, or shall ensure that the Services are performed, with reasonable care and skill.

5.2 Subject to clause In the event that any Services are not performed materially in accordance with Clause 5.1, Tetra Pak's sole obligation will be to re-perform the Services as soon as reasonably practicable provided that: (a) the Customer notifies Tetra Pak in writing of the claimed non-conformity without undue delay (and in any event within ten (10) days) after the non-conformity is or ought to have reasonably been discovered and shall provide in such notice a reasonably detailed description of the alleged non-conformity; and (b) Tetra Pak's obligation to re-perform any Services will be limited to any material non-compliance with Clause 5.1 which is discovered during the performance of the Services and for a period of thirty (30) days thereafter.

5.3 Tetra Pak will have no responsibility under Clause 5.1 or 5.2 hereof to the extent that any non-conformity is caused primarily by the Customer's negligence or its failure or delay in performing any obligation in accordance with the Quote.

5.4 If any spare part for equipment ("Part") is provided in the performance of the Services, Tetra Pak warrants that the Part will be fit for the purpose for which the Part was designed by Tetra Pak (or the relevant manufacturer if Tetra Pak is not the manufacturer of the Part) and will 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 other warranty of fitness for any other purpose which warranties are expressly disclaimed by Tetra Pak.

5.5 The warranty set out in Clause 5.4 above is granted for a period of twelve (12) months from the delivery date of the Part provided that for any Part that has a specific change interval as identified in Tetra Pak's global maintenance guidelines (TPMS) (a "Change Interval Part") the warranty is granted for the specified lifetime of the Change Interval Part or a period of twelve (12) months from the date of delivery, whichever is shorter.

5.6 Subject to clauses 5.10 and 5.11 below, for any Part that has a Defect within the respective warranty period set forth in Clause 5.5 ("Defective Part") Tetra Pak shall, at its sole option, either repair or replace the Defective Part. The repaired Defective Part or the part replacing the Defective Part under this Clause 5.6 will be subject to the remaining warranty period that applied to the Defective Part.

5.7 Tetra Pak shall have no liability for any Defect to the extent caused by any of the following:

(a) ordinary wear and tear;

- (b) use of any Part other than for the Part's intended use;
- (c) use of any Part in combination with equipment not supplied or approved in writing by Tetra Pak (such approval not to be unreasonably withheld);
- (d) combined use of any Part with parts not supplied or approved in writing by Tetra Pak (such approval not to be unreasonably withheld);
- (e) materials or information provided by, or use of a design stipulated or specified by, the Customer;
- (f) failure by the Customer to observe instructions for the operation, maintenance, cleaning or repair of any Part and the equipment for which such Part is installed, unless and except to the extent that such maintenance, cleaning or repair will be performed by Tetra Pak in the performance of the Services;
- (g) failure to use properly trained staff to operate, maintain, clean or repair the equipment as outlined in the TPMS unless and except to the extent that such maintenance, cleaning or repair will be performed by Tetra Pak in the performance of the Services;
- (h) any alteration or rebuilding of any Part or the equipment to which such Part is installed, without Tetra Pak's prior written approval (not to be unreasonably withheld);
- (i) use of any Software (as defined in Clause 7.1 below) other than in accordance with applicable specifications and documentation; or
- (j) 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.

5.8 Customer shall notify Tetra Pak in writing of any Defect without undue delay no later than ten (10) days after the Defect is or ought reasonably to have been discovered. Customer shall provide in such notice a reasonably detailed description of the alleged Defect. If the Customer fails to notify Tetra Pak within the time limit set out in this Clause 5.8, the warranty set out in Clause 5.4 will not apply.

5.9 Tetra Pak shall upon the receipt of the notice referred to in Clause 5.8 examine if and to what extent the Part is a Defective Part 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. Any Part that is subject of any claim should be kept and made 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 occurs later.

5.10 Customer acknowledges and warrants to Tetra Pak that Services and Parts being supplied to Customer pursuant to the Quote are for business purposes only and not for any domestic, personal, and/or household use and the provisions of the Consumer Guarantees Act 1993 are specifically excluded as between Tetra Pak and Customer.

5.11 Except as expressly set out in this Clause 5 for Services and for Parts, Tetra Pak makes no representations or warranties of any kind with respect to the Services or the provision of any Parts, whether implied by law or otherwise, and to the extent permitted by applicable law, any such representations or warranties are hereby expressly disclaimed. For the avoidance of doubt, Tetra Pak

does not warrant that the use of any Software (as defined in Clause 7 below) will be free from minor defects or that such minor defects will be corrected by Tetra Pak.

6 Limitation of Liability

6.1 Nothing express or implied in these Terms will confer any liability on Tetra Pak in respect of any:

(a) indirect, consequential or special loss, damage, cost or expense suffered or incurred by Customer including but not limited to loss of production, down time losses, loss of profit, loss of contracts, loss of information or data, loss of goodwill as a direct or indirect result of a breach by Tetra Pak of any of its obligations under these Terms; or

(b) loss, damage, cost or expense suffered or incurred by Customer, to the extent to which this results from any act or omission by Customer.

6.2 None of Tetra Pak, its affiliates or their respective third party licensors guarantee the adequacy, accuracy, timeliness or completeness of the Information Technology (as defined in Clause 7.8 which depends on the internet and other equipment that Tetra Pak does not control) or any communications relating to the Services including electronic communications. None of Tetra Pak, its affiliates or their respective third party licensors will be subject to any damages or liability for any errors, interruptions, omissions or delays caused by the Information Technology or any communications system. Notwithstanding the foregoing, Tetra Pak will use reasonable endeavours to mitigate the effect of such any such error, interruption, omission or delay.

6.3 Subject to Clause 6.1 and to Clause 6.2, Tetra Pak's maximum cumulative liability arising in connection with the performance or contemplated performance of the Services, whether contractual or non-contractual will be limited to the amount of the price for the Services under Quote and provided further that, in either case, if any damage is caused by a Part, Tetra Pak's liability will be limited to the amount of the price actually paid for the Part.

6.4 The limitations on Tetra Pak's liability set out in these Terms 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.

7 Software; Information Technology

7.1 If any software is provided by Tetra Pak to Customer to be used in any Part or otherwise in connection with the Services ("Software"), Tetra Pak hereby grants to Customer (or will procure that any relevant third party licensor will grant to Customer) a non-exclusive licence to access and use such Software for the sole purpose of using the Part or for the purpose of receiving the Services. Customer shall enter into any further documentation required by any licensor for the use of any Software developed by the licensor and will comply with such terms. 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.

7.2 Customer shall not modify or enhance, disassemble or otherwise de-compile the object code of the Software Products except within the limits allowed by the Copyright Act 1994. Customer shall at all times treat the Software Products as Tetra Pak confidential information.

7.3 Customer will not at any time make or permit any modifications to be made to the Software that may adversely affect the safe operation of the Software, the Part or any equipment in which the Part is installed and/or the integrity of any packages that may be produced by the equipment in which the Part is installed.

7.4 Except as otherwise agreed in writing, Customer shall be responsible for all costs of operation and maintenance of the Software.

7.5 Customer shall not alter or remove any copyright, trademark or other proprietary notices contained in the Software. Customer shall not assign, sub-licence, transfer, resell, rent, lease, loan, distribute, network or otherwise dispose of the Software or create or have created derivative works based on the Software.

7.6 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 (as defined in Clause 10.1).

7.7 If access to any Tetra Pak internet based products or systems or other information technology products or system is provided by Tetra Pak to Customer in connection with the Services ("Information Technology"), Tetra Pak hereby grants to Customer a non-exclusive, non-transferable license to permit its employees, officers, directors or managers or other persons agreed with Tetra Pak (each an "authorized user") to internally use and access such Information Technology included in the Services. Customer shall: (a) ensure that each authorised user shall hold any passwords and user identification provided by Tetra Pak in strict confidence; (b) promptly inform Tetra Pak of any actual or threatened disclosure or misuse and co-operate with Tetra Pak with respect to any action taken as a result; and (c) promptly install any security upgrade that Tetra Pak may require.

7.8 Customer shall take all precautions that are reasonably necessary to: (a) prevent access to the Information Technology by any person that is not an authorised user; (b) prevent any unauthorized distribution or redistribution of the Information Technology; and (c) protect the proprietary rights of Tetra Pak, its affiliates and their licensors in the Information Technology.

7.9 Unless otherwise expressly agreed in writing, Tetra Pak shall not be responsible for: (a) obtaining, installing and maintaining suitable equipment on which any Software (other than that which is to run on Tetra Pak equipment) or Information Technology is accessed by the Customer; (b) any communications connection required to access the Software or Information Technology; (c) the transmission to Customer of the Information Technology beyond the point of Tetra Pak's or its service provider's computer facility; or (d) any fees payable by Customer for any communications lines to any person or entity in order to access the Information Technology.

8 Tools and equipment

Customer shall make available to Tetra Pak any tool or template that has been delivered to the Customer for the equipment for which Services will be provided pursuant to the Quote or a Tetra Pak service confirmation order if applicable, including without limitation any tool or template delivered with: (a) the purchase or lease of such equipment; or (b) the maintenance or other servicing of such equipment.

9 Intellectual Property Rights

9.1 Any intellectual property rights including but not limited to patents, trademarks, industrial design, copyright, rights related 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”) used, provided or developed directly or indirectly by Tetra Pak may only be used by the Customer during the provision of, and in connection with, the Services.

9.2 No ownership, interest in or other rights to Intellectual Property Rights or Technical Information of the Customer or Tetra Pak are assigned or granted to the other party unless specifically agreed otherwise in writing.

9.3 Based upon pre-existing Tetra Pak Intellectual Property Rights or Technical Information, Tetra Pak will have sole ownership of all right, title and interest in and to any and all derivative Intellectual Property Rights and Technical Information generated or developed by Tetra Pak or in collaboration with the Customer during the provision of, or in connection with, the Services. If the Customer specifically requests a customized report, the Customer shall then have ownership of such report. For the avoidance of doubt, the ownership of the customized report does not include the ownership of Intellectual Property Rights or Technical Information contained in the report or the underlying methodology and format used in such reports.

10. Confidentiality

10.1 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”) as 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 provide evidence 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.

10.2 Notwithstanding Clause 10.1, 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 pursuant to these Terms 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.

10.3 The parties agree to treat these Terms as Confidential Information.

10.4 Notwithstanding Clauses 10.1 to and including 10.3 above, Tetra Pak will have the right to use all information disclosed by the Customer to Tetra Pak in connection with the Services (including any Confidential Information) and to share such information with its third party suppliers, for the purposes of providing benchmarks for other customers and to develop and improve Tetra Pak’s products and services, provided that references to the Customer are removed from such information (including any Confidential Information) so that there is no link to identify the information with the Customer.

11. Force Majeure

Either party will be entitled to suspend performance hereunder (except for any payment obligation) to the extent such performance is impeded or made unreasonably onerous by any circumstance beyond its reasonable control including but not limited to industrial disputes, fire, war (whether declared or undeclared), terrorism, epidemics, severe weather, volcanic eruptions, 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 circumstance referred to in this clause. A party invoking this provision shall notify the other party as soon as 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 terminate the Quote by providing written notice to the other party.

12. General

12.1 Tetra Pak will not be bound by any statements made by any Tetra Pak representative or appearing in any printed material, which are not also stated in the Quote and/or these Terms and Customer acknowledges that it has not relied on any such statement in placing the order for Services.

12.2 No addition to or modification of any provision of these Terms will be binding upon either party unless made in writing and signed by its duly authorized representatives.

12.3 No course of dealing, trade usage or course of performance will be relevant to explain or supplement these Terms.

12.4 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 written consent of the Customer provided that Tetra Pak shall remain responsible for the proper fulfilment of its duties as agreed.


12.5 Tetra Pak will be entitled to sub-contract its obligations to any third party without prior notice or consent of the Customer provided that Tetra Pak remains responsible to Customer for the performance of any such obligations.

12.6 Customer shall not, for the duration of the services and for six (6) months following the completion of the provision of the Services as set out in the Quote, actively solicit for employment any employee of Tetra Pak who has been or is engaged in the provision of the Services.

12.7 If any provision of these Terms is found to be illegal, invalid or unenforceable by operation of law, such provision shall 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 these Terms will not be affected and remain in full force and effect.

12.8 Except as otherwise set out in these Terms, the action or failure to act by the Customer or by Tetra Pak to enforce any one or all of its rights will not act as a waiver or variation of such rights nor deemed to constitute acceptance of a breach of any of the provisions of these Terms.

12.9 If GST (being a goods and services tax levied or imposed under Goods and Services Tax Act 1985) is levied or imposed on or in respect of any supply made under or in connection with these



Terms, then the consideration provided for that supply is increased by the rate at which the GST is levied or imposed. Where any consideration is increased under this clause the increased consideration is payable within seven (7) days of receipt of a valid GST invoice from Tetra Pak.

13 Governing Law and Jurisdiction

The laws of New Zealand governs these Terms and Tetra Pak and Customer submit to the exclusive jurisdiction of the courts of New Zealand.

Last updated March 2014