

Terms and Conditions for the Supply of Goods

1. Interpretation

1.1. Definitions:

1. **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
2. **Call-Off Deadline:** has the meaning given in clause 4.3.
3. **Contract:** each contract between you and us for the sale and purchase of Goods in accordance with these terms and conditions.
4. **Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.
5. **Goods:** the goods (or any part of them) set out in our Order Confirmation.
6. **Order:** your order for the Goods.
7. **Order Confirmation:** our written acceptance of your Order as set out on our order acknowledgement form.
8. **Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by you and us.
9. **we/us:** Povoas Packaging Limited, a company registered in England and Wales with company number 00529777 whose registered office is at Stoke Albany Road, Desborough, Kettering, Northamptonshire NN14 2SR.
10. **you:** the person or firm who purchases Goods from us.

1.2. Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email but excludes fax.

2. Basis of contract

- 2.1. These terms and conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2. Your Order constitutes an offer by you to purchase Goods in accordance with these terms and conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification submitted by you are complete and accurate.
- 2.3. Your Order will only be deemed to be accepted when we issue our Order Confirmation, at which point a Contract will come into existence.
- 2.4. Any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our website or other marketing materials are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They will not form part of the Contract nor have any contractual force.
- 2.5. A quotation for Goods given by us will not constitute an offer capable of acceptance by you. We may revoke any quotation issued by us at any time.
- 2.6. No Contract can be cancelled without our written consent which we may give or withhold at our sole discretion (and may be subject to the payment of a cancellation fee or to reimbursing us for any losses incurred as a result of the cancellation).

3. Goods

- 3.1. The Goods are as described in our Order Confirmation (as modified by any applicable Specification).
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Specification or branding designs supplied by you, you will indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification or branding designs. This clause 3.2 will survive termination of the Contract.
- 3.3. We reserve the right to amend the Specification if required by any applicable statutory or regulatory requirement, and we will notify you in any such event.

4. Delivery

- 4.1. We will ensure that each delivery of the Goods is accompanied by a delivery note.
- 4.2. Unless you and we agree that the Goods are to be delivered Ex Works (in which case you must collect them from our premises within five Business Days of us notifying you that they are ready) we will deliver the Goods to the location set out in our Order Confirmation at any time after we notify you that they are ready.
- 4.3. At our sole discretion, we may agree with you in writing that certain of the Goods are to be stored by us until called off by you. All Goods must be called off within the period set out in our Order Confirmation or, where no such period is specified, within 90 days of the Goods first being available for delivery or collection (**Call-off Deadline**).
- 4.4. Delivery is completed on the completion of unloading of the Goods at the agreed delivery location (where we arrange delivery) or the completion of loading of the Goods at our premises (where you are collecting them).

- 4.5. Any dates quoted for delivery (or for supply of proofs or samples) are approximate only, and time of delivery will not be of the essence of the Contract.
- 4.6. If we fail to deliver the Goods at all, our liability will be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We will have no liability for any failure to deliver or delay in delivering the Goods to the extent that such failure or delay is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7. If you fail to accept delivery of (or if applicable, collect) the Goods within five Business Days of us notifying you that the Goods are ready, then, except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods will be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which we notified you that the Goods were ready; and
 - (b) we will store the Goods until actual delivery/collection takes place, and charge you for all related costs and expenses (including insurance).
- 4.8. If ten Business Days after the day on which we notified you that the Goods were ready for delivery (or if applicable, 30 days after the Call-off Deadline) you have not accepted actual delivery of them (or if applicable, collected them), we may resell or destroy part or all of the Goods (except that we will not resell Goods carrying your branding). We will charge you for all costs (including loss of profit) incurred by us in respect of the resale or destruction of any Goods.
- 4.9. We do not guarantee exact quantities of the Goods. If we deliver 10% more or less than the quantity of Goods ordered we will be deemed to have complied with the Contract and we will invoice (and you will pay) for the Goods actually delivered.
- 4.10. Where the quantity of Goods delivered is less than the quantity ordered, you must provide evidence of the shortage to our reasonable satisfaction within 7 days of delivery.
- 4.11. We may deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment will constitute a separate Contract. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.
- 4.12. If our Order Confirmation states that any particular Incoterm applies to the delivery of the Goods then the Incoterm will prevail if there is any inconsistency between it and these terms and conditions.
- 5. Quality**
- 5.1. We warrant that on delivery, and for a period of three months from the date of delivery (**Warranty Period**), the Goods will:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be reasonably fit for any particular purpose confirmed by us in writing.
- 5.2. Subject to clause 5.3, if:
- (a) you give notice in writing to us during the Warranty Period within a reasonable time of discovery (which for obvious defects must be within 7 days of delivery) that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) we are given a reasonable opportunity of examining such Goods to confirm their non-compliance; and
 - (c) you (if asked to do so by us) return such Goods to our place of business at your cost and risk,
- we will, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3. We will not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- (a) the alleged defect relates to the size of the Goods delivered and the width and length are within 5% of the Specification and the thickness is within 10% of the Specification;
 - (b) the alleged defect relates to the printing on the Goods of any machine-readable code or symbol and we have printed the code or symbol specified by you in accordance with generally accepted standards and procedures for flexographic printing on flexible substrates and the defect falls within generally accepted tolerances in relation to such printing;
 - (c) in respect of crop film, because of overstretching of the film or exposure to insecticides or any form of sulphur;
 - (d) you make any further use of such Goods after giving notice in accordance with clause 5.2;
 - (e) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (f) the defect arises as a result of us following any drawing, design or specification supplied by you;
 - (g) you alter or repair such Goods without our written consent;
 - (h) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (i) the Goods differ from their description or any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4. Except as provided in this clause 5, we will have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6. These terms and conditions apply to any repaired or replacement Goods supplied by us.
- 6. Title and risk**
- 6.1. The risk in the Goods will pass to you on completion of delivery (as defined at clause 4.4 above).

- 6.2. Title to any Goods will not pass to you until the earlier of:
- (a) us receiving payment in full (in cash or cleared funds) for those Goods; and
 - (b) you reselling those Goods, or irreversibly incorporating those Goods into another product or irreversibly making use of the Goods to package your own products, in which case title to the Goods will pass to you at the time specified in clause 6.4.
- 6.3. Until title to the Goods has passed to you, you must:
- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify us immediately if you become subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
 - (e) give us such information as we may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) your ongoing financial position.
- 6.4. Subject to clause 6.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:
- (a) you do so as principal and not as our agent; and
 - (b) title to the Goods will pass from us to you immediately before the time at which resale of the Goods (or sale of any other goods which incorporate the Goods) by you occurs.
- 6.5. At any time before title to the Goods passes to you, we may:
- (a) by notice in writing, terminate your right under clause 6.4 to resell the Goods or use them in the ordinary course of your business; and
 - (b) require you to deliver up all Goods in your possession that have not been resold, or irreversibly incorporated into another product or irreversibly used to package your own products and if you fail to do so promptly, enter any of your premises or those of any third party where the Goods are stored in order to recover them.
- 6.6. Save as set out at clause 6.7, any bespoke plates created by us for the manufacture of the Goods will remain owned by us at all times and we may destroy them at any time if we reasonably determine that they are unlikely to be used in the manufacture of further Goods. At your written request and subject to you paying our standard rates then in force we will sell to you (on an "as is" basis with no warranties provided whatsoever) any such bespoke plates.
- 6.7. If you have paid to us a separate fee for the manufacture of bespoke plates, then (subject to there being no outstanding Orders which require such plates and subject to you having paid all outstanding invoices issued by us to you in relation to Orders or any other matter) we will at your request and cost deliver such plates to you. Title and risk in the plates will pass to you (on an "as is" basis with no warranties provided whatsoever) on completion of delivery.
- 6.8. Any intellectual property in branding supplied by you to us in order to create bespoke plates will remain owned by you at all times. You hereby license us to use such intellectual property solely to the extent necessary to create the bespoke plates and to manufacture the Goods for supply to you.
- 7. Price and payment**
- 7.1. The price of the Goods will be the price set out in our Order Confirmation.
- 7.2. We may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (b) any delay caused by any of your instructions or your failure to give us adequate or accurate information or instructions.
- 7.3. The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which you will additionally be liable to pay to us at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs and charges of packaging, insurance and transport of the Goods (unless otherwise agreed between you and us).
- 7.4. We may invoice you for the Goods on or at any time after their dispatch (of if earlier and where applicable, at any time after the Call-off Deadline).
- 7.5. You must pay each invoice submitted by us:
- (a) within 30 days of the end of the month of the date of the invoice or in accordance with any other credit terms agreed by us and confirmed in writing to you; and
 - (b) in full and in cleared funds to a bank account notified in writing by us.
- 7.6. If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 9, you will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7. All amounts due under the Contract must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.8. We may at any time withdraw or amend any credit terms agreed with you (including those set out at clause 7.5 above).

8. Limitation of liability

8.1. The price of the Goods is contingent in part on the limits and exclusions in this clause. We may be willing to agree increased liability but this will require an increase in the price of the Goods or a one-off payment by you to cover any increased insurance costs.

8.2. The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

8.4. Subject to clause 8.3, our total liability to you in respect of each Contract will not exceed the price of the relevant Goods.

8.5. Subject to clause 8.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.6. This clause 8 will survive termination of the Contract.

9. Termination

9.1. Without limiting our other rights or remedies, we may terminate any Contract with immediate effect by giving written notice to you if:

- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so;
- (b) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (d) your financial position deteriorates so far as to reasonably justify the opinion that you may be unable to pay the price of the Goods.

9.2. Without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under the Contract (or any other contract between you and us) on the due date for payment.

9.3. Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract (or any other contract between you and us) on the due date for payment.

9.4. On termination of the Contract for any reason you must immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, we will submit an invoice, which will be payable by you immediately on receipt.

9.5. Termination of the Contract, however arising, will not affect either of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect.

10. Force majeure

We will not be in breach of the Contract or otherwise liable for any failure or delay in the performance of our obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations will be extended accordingly. If the period of delay or non-performance continues for two months, you may terminate the Contract by giving 7 days' written notice to us.

11. General

11.1. Assignment and other dealings.

- (a) We may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of our rights or obligations under the Contract.

- (b) You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.

11.2. Confidentiality.

- (a) Each party undertakes that it will not at any time disclose to any person any confidential information concerning the business, assets, drawings, designs, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party must ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3. Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4. Variation. No variation of the Contract will be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5. Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not waive that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.

11.6. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.7. Notices.

- (a) Any notice given to a party under or in connection with the Contract must be in writing and delivered by hand or by pre-paid first-class post or other next working day delivery service or pre-paid airmail at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice will be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by pre-paid airmail, at 9.00am on the fifth Business Day after posting.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8. Third party rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the law of England and Wales.

11.10. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

August 2022