

# ORAFOL AUSTRALIA TERMS AND CONDITIONS OF SALE

All Orders placed with ORAFOL Australia Pty Ltd ACN 065 420 706 (hereinafter referred to as "OA") are subject to the following Terms and Conditions. The Customer acknowledges and confirms that it has read, understood, and unconditionally accepts, the Terms and Conditions.

The Terms and Conditions constitute a legally binding Agreement between OA and the Customer.

## 1. Definitions and Interpretation

### 1.1 In these Terms and Conditions:

"**Agreement**" means the legally binding agreement (incorporating the Quote, the Order Confirmation and the following Terms and Conditions) formed between OA and the Customer;

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Goods and/or Services are being delivered to the Customer;

"**Claim**" means any actions, suits, proceedings, demands, losses, injuries, damages, costs, expenses, judgments or any other detriment whatsoever;

"**Confidential Information**" means information conveyed in written, graphic, oral, visual, electronic or physical form, or recorded in any way whatsoever, including (without limitation):

- (a) any technical and commercial data, know-how and information, and any other activity or information of any nature whatsoever including data, data bases, source codes, methodologies, techniques, manuals, artwork, advertising manuals, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, marketing or commercial information, studies, improvements, examples, cases, findings, inventions and ideas, the Intellectual Property, trade secrets, patents, engineering and product specifications, material formulations, models, prototype, product concepts and other records and information in relation to OA or the business of OA;
  - (b) financial, management and marketing information;
  - (c) research, plans or other documentation;
  - (d) information imparted in discussions or obtained through inspections or by any other method from OA or the agents, advisers, consultants, employees or contractors of OA;
  - (e) information marked as 'confidential';
  - (f) information which the parties are instructed is confidential, or which the parties are instructed to be kept confidential;
  - (g) information concerning the organisation, finance, customers, markets and suppliers of OA;
  - (h) information disclosed to the parties in circumstances which would, to a reasonable person, indicate that the information is sensitive commercial information, or information which, by its nature, is confidential, or information of a kind which, if disclosed to third persons, could or might cause any of the parties to sustain loss or damage; and
  - (i) information of any party's business, products, operations, systems, assets or liabilities,
- but does not include information which:
- (j) is or becomes public knowledge other than by a breach of this Agreement;
  - (k) is required to be disclosed by law;
  - (l) was known by the recipient as at the date of this Agreement;
  - (m) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information,

where the burden of establishing any of the exceptions referred to in (j) to (m) above will be upon the recipient;

"**Credit Account**" means the credit facility or account if any established by OA for the Customer pursuant to which OA has at its sole, absolute and unfettered discretion agreed to extend credit to the credit limit to the Customer for the purpose of enabling the Customer to purchase Goods and/or Services from OA;

"**Credit Application Form**" means the OA credit application form by which a Customer can apply for a credit account with OA in respect of the sale of Goods and/or Services by OA to the Customer;

"**Customer**" means any Person that enters the Agreement for the purchase of the Goods and/or Services as the Customer, or enters the Agreement for and on behalf of the Customer, and if there is more than one Customer, then each of them jointly and severally, including all executors, administrators, successors and permitted assigns or any person acting on behalf of and with the authority of the Customer;

"**Delivery**" means the delivery of the Goods and/or Services to the Customer's Delivery Address in the Territory;

"**Delivery Address**" means the delivery address of the Customer or the carrier of the Customer in the Territory as specified in the Order;

"**Delivery Time**" means the estimated time of Delivery by OA of the Goods and/or Services to the Delivery Address or to the carrier of the Customer;

"**Goods**" means the goods supplied or to be supplied by OA to the Customer from time to time pursuant to this Agreement;

"**GST**" means GST under the GST Law and any other tax, levy or impost (including a goods and services tax, consumption tax or value added tax) applying in respect of the payment of any money under this Agreement or the supply of any goods or services under this Agreement;

"**GST Law**" means A New Tax System (Goods and Services) Tax Act 1999 (Cth) and any other law, public ruling or determination imposing or dealing with the assessment, collection, imposition, calculation, payment or recovery of or liability for GST;

"**Intellectual Property**" means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with: (a) a party's intellectual property that existed prior to, or created independently of, this Agreement;

(b) any Confidential Information, trade secrets, technical data and know-how;

(c) copyright;

(d) inventions and discoveries (including patents, innovation patents and utility models);

(e) trademarks or service marks and rights in, arising out of, or associated with domain names, business names and social media accounts;

(f) designs or circuit layouts; and

(g) any other rights resulting from intellectual property activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist,

whether or not now existing and registered or registrable and includes any right to apply for the registration of rights and all renewals and extensions;

"**Law**" means all applicable laws of the State or Territory in which the Goods and/or Services are provided by OA to the Customer including the laws of the Commonwealth and all amendments and replacing laws;

"**Loss**" means any damage, loss, liability, expense, cost or any detriment whatsoever and howsoever arising, whether direct or indirect, actual or contingent, special, consequential or incidental, present or future;

"**Order**" means an Order placed by the Customer with OA for the purchase and/or delivery of Goods and/or Services to the Customer which must specify (and provide any other information requested or required by OA):

(a) the date of the placement of the Order;

(b) the quantity and description of the Goods and/or Services ordered;

(c) the proposed Delivery Time; and

(d) the Delivery Address;

"**Order Confirmation**" means a written confirmation of the Order by OA that may be in the form of an invoice provided to the Customer by email, post or upon Delivery of the Goods and/or provision of the Services;

"**OA**" means ORAFOL Australia Pty Ltd ACN 065 420 706 and includes OA's administrators, successors and permitted assigns and any person acting on behalf of and with the authority of OA;

"**Party**" means a party to this Agreement;

"**Person**" means a natural person, corporation or any body that is recognised at Law as being a legal entity or having legal personality;

"**Price**" means the price specified in the Order Confirmation as payable by the Customer to OA for the Goods and/or Services, or the price/s specified in, or associated with, any specific Quote issued by OA for the supply of Goods and/or Services at a particular price, whichever is greater. The Quote shall be open for acceptance within the period stated in the Quote or, if no period is stated, within 30 days of the Quote date;

"**Quote**" means the written quotation issued by OA to the Customer in relation to the Goods and/or Services (including any special conditions and/or other details applicable to the Customer's Order under this Agreement) to which these Terms and Conditions are either attached or where access to these Terms and Conditions may be gained by the Customer accessing any website link specified in the Quote or any link contained on OA's website, or by the Customer making a request of OA for a copy of these Terms and Conditions;

"**Services**" means the services provided or to be provided by OA to the Customer from time to time pursuant to the Agreement;

"**Terms and Conditions**" means these Terms and Conditions as amended from time to time by OA; and

"**Territory**" means Australia or any other geographical area determined by OA from time to time as being the only serviceable areas for an Order.

### 1.2 In these Terms and Conditions, unless the context states otherwise:

(a) headings are included for convenience only and do not affect the interpretation of the Terms and Conditions;

(b) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;

(c) words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;

(d) grammatical forms of defined words or phrases have corresponding meanings;

(e) unless otherwise stated, a reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

- (f) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) references to a party are intended to bind their executors, administrators and permitted transferees; and
- (h) obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

## 2. Formation of Agreement

- 2.1 These Terms and Conditions supersede all previous Terms and Conditions imposed by OA (including any terms and conditions which are inconsistent with these Terms and Conditions) and may only be varied in writing by OA.
- 2.2 Each Order will constitute an offer by the Customer to purchase Goods and/or Services from OA subject to these Terms and Conditions. Any price lists, proposals or Quotes given by OA to the Customer are an invitation to the Customer to place an Order with OA only and do not constitute an offer capable of acceptance by the Customer.
- 2.3 The Quote, the Order Confirmation, these Terms and Conditions and the OA OCS Warranty Program, constitute the entire Agreement between the parties. Any prior understandings, representations, variations, exclusions and/or qualifications of any kind whatsoever (whether contained in any purchase order or document of the Customer, expressed verbally or contained in any writing) shall not be binding on the parties except to the extent incorporated expressly in writing into the Agreement or expressly agreed in writing by OA.
- 2.4 A Quote submitted by OA to the Customer may be varied or withdrawn at any time prior to the acceptance of an Order by OA. Clerical or other errors made in respect of any Quote issued shall be subject to correction by OA.
- 2.5 A binding Agreement will only be made between OA and the Customer for the sale and purchase of Goods and/or Services if, upon the acceptance of the Order by OA, the Customer is provided with an Order Confirmation.
- 2.6 OA may terminate this Agreement at any time before the Delivery of Goods and/or provision of Services to the Customer by giving written notice to the Customer. OA shall not be liable for any Claim or Loss whatsoever arising from such cancellation. Provided the Customer is not at fault for the cancellation, OA will refund any deposit or monies paid by the Customer in relation to any invoice/s issued by OA in respect of the Order.
- 2.7 For the avoidance of doubt, OA is under no legal obligation to accept any Order of the Customer. The Customer acknowledges that OA's ability to accept or fulfil an Order is subject to the availability of stock and/or the capacity of OA (whether in relation to the availability of servicing personnel or otherwise) to meet an Order of the Customer. OA may at its sole and absolute discretion and for any reason whatsoever reject any Order from the Customer.
- 2.8 An Order may only be made by the Customer to OA:
  - (a) in writing or by email;
  - (b) by telephone, if within 3 business days of the placement of the Order, it is confirmed by a means outlined in clause 2.8(a); or
  - (c) via the online eStore at <https://store.orafol.com.au/>.
- 2.9 The Agreement resulting from the provision of the Order Confirmation to the Customer cannot be terminated or cancelled by the Customer for any reason without OA's prior written approval (unless it is otherwise permitted under the provisions of these Terms and Conditions or at law) and to the extent that any such termination or cancellation by the Customer is unlawful or constitutes a breach of this Agreement, OA may at its discretion impose a reasonable cancellation fee against the Customer (including, without limitation, a Claim for any Loss suffered by OA).
- 2.10 A minimum Order Value of \$75.00 (excluding GST) applies to all Orders. OA may impose a \$15.00 surcharge for any Orders placed under the minimum Order value.
- 2.11 The Customer must review all invoices issued by OA and advise OA of any errors or omissions before the invoice due date. If the Customer does not advise OA of any errors or omissions by the invoice due date, the invoice is deemed valid and the Customer accepts liability for the invoice in full, without any deductions or set off whatsoever.
- 2.12 The Customer agrees to be bound by any subsequent versions of these Terms and Conditions as they appear on the website <https://www.orafol.com/en/australia/> in respect of any further Orders placed by the Customer immediately following such changes. OA will notify the Customer of the existence of the new version of these Terms and Conditions. If this occurs, and the Customer does not agree to be bound by the new version of the Terms and Conditions, the Customer may terminate the Agreement with immediate effect, save that OA will be entitled to be paid by the Customer for all Goods and/or Services supplied, or to be supplied, to the Customer pursuant to any existing Order/s, including the Price, fees and charges incurred, or to be incurred, by OA, to the date of termination of the Agreement by the Customer. A copy of any subsequent versions of these Terms and Conditions may be obtained from OA by the Customer on the Customer's request via telephone or email.

## 3. Payment Terms

- 3.1 The Customer agrees to pay OA the Price in full in accordance with the invoice terms upon the Delivery of the Goods and/or Services to the Customer, unless the Customer has completed and returned a Credit Application Form to OA and OA has agreed to extend credit to the Customer, in which case, the Customer agrees to pay the Price in full to OA on or before the last day of the month following the date of invoice or as otherwise agreed in writing with OA.
- 3.2 Payment for the Customer's first Order shall be made in full in advance before shipment of the Goods or provision of Services.

- 3.3 If OA agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as forming part of the Terms and Conditions of this Agreement. Notwithstanding any credit terms given to the Customer, OA may decline to provide any further Goods and/or Services on credit to the Customer at any time after giving written notice to the Customer.
- 3.4 Payments are to be made via bank transfer, electronic funds transfer, EFTPOS or credit card (which may incur a surcharge). The following surcharges apply, which may increase from time to time:
  - (a) American Express payments, made via SimplyPaid, incur a 2.4% surcharge (including GST);
- 3.5 Payments must be made to OA in full without deduction or set off against the Price, whether legal or equitable.
- 3.6 If any part of an amount owing to OA is at any time overdue, then the whole amount owing to OA at that time is deemed immediately due and payable.
- 3.7 An event of default ("**Default Event**") is deemed to have occurred under this Agreement or any other agreement between the parties where:
  - (a) any amount is outstanding, due and payable by the Customer to OA;
  - (b) OA obtains unfavourable reports on the financial standing of the Customer (and the Customer hereby authorises OA to conduct credit checks on the Customer);
  - (c) the Customer ceases to trade;
  - (d) an application is made to wind up or place the Customer into insolvency or external administration;
  - (e) an order is made for the Customer to be wound up, deregistered or dissolved;
  - (f) the Customer becomes bankrupt, insolvent, enters into administration or receivership; or
  - (g) any other event that indicates that the Customer may not be able to pay their debts to OA as they fall due.
- 3.8 OA may elect to suspend some or all of its obligations under this Agreement until all outstanding monies are received in full from the Customer. OA is not liable to the Customer for any Claim or Loss the Customer suffers because OA exercised its rights under this subclause.
- 3.9 The Price is exclusive of GST, freight and Delivery charges, unless stated otherwise. The Customer is liable for any GST, freight and Delivery charges. The Customer must pay to OA any GST, freight and Delivery charges, at the same time and in the same manner as the first payment of the Price in respect of any Goods and/or Services is made by the Customer to OA. OA will provide the Customer with a tax invoice showing the applicable GST, freight and Delivery charges, including other miscellaneous charges where applicable.
- 3.10 Prices, fees and charges are subject to change by OA at any time. OA may increase the Price if there is an increase in OA's costs between the date of an Order and the date the Goods and/or Services are ready for Delivery or for any other good reason. If this occurs, the Customer may cancel the Order but OA is not liable for any Claim or Loss the Customer incurs in connection with the cancellation. OA will refund any deposit or monies paid by the Customer in relation to any invoice/s issued by OA in respect of the cancelled Order.
- 3.11 Without limiting the ability of OA to recover all amounts owing to OA under this Agreement, the Customer authorises OA to charge any amounts owing to OA under this Agreement to any credit card or account details provided by the Customer to OA.
- 3.12 Time for payment is of the essence.

## 4. Interest and debt collection

- 4.1 Interest on overdue invoices or accounts shall accrue daily from the date when payment becomes due, until the date of payment, at the standard contract default rate prescribed by the Queensland Law Society from time to time and such interest shall compound monthly until the invoice or account is settled in full.
- 4.2 Should the account be referred to a collection agency, the Customer shall pay a 15% collection fee plus any and all costs associated with the recovery of the debt including without limitation debt collection, outsourcing and legal costs on an indemnity basis in relation to, but without limitation, any steps or action taken prior to, or arising directly or indirectly from, the commencement of any proceedings before a Court or Tribunal.

## 5. Title and Risk

- 5.1 The Customer acknowledges and agrees that no title to the Goods shall pass to the Customer until payment of all monies owed to OA has been received in full by OA. Risk of Loss to the Goods will pass to the Customer at the time of dispatch from OA's nominated warehouse. OA shall not be responsible for any Claim or Loss in relation to the Goods in transit. Insurance for Goods in transit to the Customer will not be arranged by OA. The Customer shall be responsible for the insurance of the Goods in transit, unless the parties agree otherwise in writing. The Customer shall provide proof of such insurance to OA if requested by OA.
- 5.2 Until the Price has been paid in full:
  - (a) legal ownership of Goods shall remain with OA;
  - (b) where the Customer is in default of a payment term under this Agreement, OA may enter the Customer's premises (or any premises where the Goods are located), without notice and without liability for trespass or any resulting damage and may retake possession of the Goods. All costs and expenses incurred by OA as a result of taking action to retake possession of the Goods, together with transportation and storage charges, must be paid by the Customer to OA on demand;
  - (c) OA may keep or resell any repossessed Goods;

- (d) if the Customer resells Goods without first having paid OA for them, the Customer shall (if requested in writing by OA) hold that part of the proceeds of the sale, which represents the invoiced Price of Goods, in a separate identifiable account as the beneficial property of OA and shall pay the amount to OA on request; and
  - (e) notwithstanding anything contained in subclauses 5.2(a)-(d) (inclusive), OA shall be entitled to maintain its legal rights against the Customer for the Price of the Goods.
- 5.3 Until such time as the Customer becomes the owner of the Goods, the Customer will:
- (a) store the Goods separately and marked on premise;
  - (b) ensure the Goods are kept in original condition;
  - (c) secure the Goods from risk, damage or theft; and
  - (d) keep the Goods fully insured against all common business risks. The Customer shall provide proof of such insurance to OA if requested.
- 5.4 Where the Customer makes a new product from the Goods, whether deemed as finished or not, or the Customer mixes the Goods procured to create an alternate product, the Customer agrees:
- (a) that, until payment of all sums owing to OA is received, the ownership of the original Goods procured from OA still resides with OA;
  - (b) that, until payment of all sums owing to OA is received, the ownership of the new product passes to OA;
  - (c) that, until payment of all sums owing to OA is received, these new products or any proceeds of sale will be held on trust for OA; and
  - (d) should the Customer die, withhold payment or call a meeting of its creditors, become insolvent, declare bankruptcy, enter into liquidation, has a wind up application lodged against it or has an administrator appointed, OA may, without prejudice to its other rights under this Agreement, require payment or repossess the Goods.
- 5.5 The Customer acknowledges that under the *Personal Property Securities Act 2009* (Cth) ("PPSA"):
- (a) this Agreement constitutes a security agreement;
  - (b) the Customer grants OA a purchase money security interest in the Goods and any proceeds;
  - (c) OA may register a security interest in the Goods on the Personal Property Securities Register ("PPSR") at any time before or after Delivery of the Goods; and
  - (d) OA may apply any amounts received from the Customer towards amounts owing by the Customer in such order as OA may choose.
- 5.6 The Customer agrees to provide information and do anything OA reasonably requires for OA to register, maintain and enforce its security interest.
- 5.7 The Customer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.
- 5.8 If the Customer defaults in the performance of any obligation owed to OA under these Terms and Conditions, or any other agreement with OA to supply Goods to the Customer, OA may enforce its security interest in any Goods by exercising all or any of its rights under the Terms and Conditions or the PPSA.
- 5.9 To the maximum extent permitted by law, the Customer and OA agree that the following provisions of the PPSA do not apply to the enforcement by OA of its security interest in the Goods: sections 95, 118, 121, 125, 130, 132, 135, 142 and 143.
- 5.10 Terms defined in the PPSA (including purchase money security interest, verification statement, proceeds and various other terms) have the same meaning when used in this Agreement.
- 5.11 The Customer must pay any reasonable expenses (including legal fees on a full indemnity basis) that OA may incur in repossessing Goods and/or enforcing its rights under these Terms and Condition, the PPSA or at Law.

## 6. Intellectual Property

- 6.1 The supply of Goods and/or Services to the Customer does not constitute a transfer of OA's Intellectual Property, or the Intellectual Property in the Goods and/or Services or any part thereof of such rights, to the Customer and all such rights are reserved to the true and lawful owners.
- 6.2 The Customer shall not do anything to infringe OA's Intellectual Property, the Intellectual Property of a third party, or engage in the disassembly, deconstruction or reengineering of OA's Intellectual Property.
- 6.3 Where OA is the supplier or manufacturer of Goods and/or Services which contribute to the Customer's design and specifications, the Customer indemnifies OA against all Claims and Losses that OA or its related entities and associates may suffer as a result of a Claim by a third party for any infringement of the third party's Intellectual Property.
- 6.4 The Customer indemnifies OA with respect to any infringement of OA's Intellectual Property. The Customer shall be responsible for any Claims and Losses incurred by OA as a result from any infringement by the Customer relating to this Agreement or any agreement between OA and the Customer. OA reserves the right to terminate this Agreement or any agreement in relation to any such infringement.

## 7. Security and Charge

- 7.1 Despite anything to the contrary contained herein of any other rights which OA may have:
- (a) where the Customer and the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and the Guarantor agree to mortgage and/or charge all of their joint and/or several interests in the said land, realty or any other asset to OA or OA's nominee to secure all amounts and other monetary obligations payable under these Terms and Conditions;

- (b) the Customer and the Guarantor (if any) acknowledge and agree that OA (or OA's nominee) shall be entitled to lodge a caveat. The Customer and Guarantor shall give their written consent in registrable form to the lodgement of a non-lapsing caveat immediately on OA's request and the Customer and Guarantor shall not object to the lodgement or upholding of said caveat or take any steps to have any such caveat removed from the land titles office register. This caveat shall be withdrawn once all payments and other monetary obligations payable under this Agreement have been met; and
- (c) should OA elect to proceed in any manner in accordance with this clause and/or its sub-clause/s, the Customer and Guarantor (if any) shall indemnify OA from and against all of OA's costs and disbursements, including legal costs on a solicitor and client basis. The Customer and Guarantor (if any) agree to irrevocably nominate, constitute and appoint OA or the OA's nominee as the Customer's and Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

## 8. Credit Limit

- 8.1 The approval of any credit limit, facility or Credit Account to a Customer is an indication only of OA's intention at that time and is revocable at will.
- 8.2 For the avoidance of any doubt, OA may at any time (at its sole, absolute and unfettered discretion), but after giving notice to the Customer, vary, suspend or cancel any credit limit, facility or Credit Account extended to a Customer in respect of any further Orders, without any Claim or Loss to OA from the Customer or any other party whatsoever.

## 9. Delivery

- 9.1 Any Delivery Times quoted by OA for the Delivery of Goods are estimates only. OA will use reasonable endeavours to deliver the Goods to the Delivery Address on or before the Delivery Time specified in the Order. OA shall not be liable for any Claim or Loss by the Customer or any third party for a delay, inability or failure to effect a Delivery by the Delivery Time or at all. Any delay, inability or a failure by OA to effect a Delivery shall not entitle the Customer to treat this Agreement as repudiated by OA.
- 9.2 OA may notify the Customer of a new Delivery Time in the circumstances.
- 9.3 OA reserves the right to cancel an Order Confirmation at any time before or following the Delivery Time. OA shall not be liable for any Claim or Loss whatsoever arising from such cancellation. Provided the Customer is not at fault for the cancellation, OA will refund any deposit or monies paid by the Customer in relation to any invoice/s issued by OA in respect of the Order.
- 9.4 Any term relating to the quantity of Goods is not a fundamental term (or the essence) of this Agreement. OA reserves the right to make partial deliveries against an Order and to invoice each partial Delivery separately and the Customer cannot reject Goods on the basis of a partial Delivery.
- 9.5 Where Goods remain in the possession of OA after the Delivery Time (including where the Customer fails for whatever reason to take Delivery of the Goods), OA is entitled to charge the Customer for all Claims or Losses occasioned by the Customer in not accepting Delivery, together with any Claims or Losses in respect of the carriage, care and custody of the Goods.
- 9.6 Unless otherwise agreed in writing by OA, all Goods will be delivered to the Delivery Address. The Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period to accept Delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods. The Customer warrants that the person who signs the delivery notice is authorised to receive the Goods on their behalf.
- 9.7 A quantity, description, date and place of Delivery, as indicated on OAs invoice or dispatch note, shall be referenced as evidence of quantity, description, date and place of Delivery of the Goods.
- 9.8 If the Customer fails to take Delivery of the Goods on the specified date, and the Order is returned to OA, a second delivery charge may be imposed.
- 9.9 OA may arrange for the storage and carriage of Goods by couriers, contractors or sub-contractors. Notwithstanding any specific instructions given by the Customer as to the mode of carriage of Goods, and in the exercise of its absolute discretion, OA may have Goods carried or forwarded by any method which it deems fit.
- 9.10 Unless otherwise agreed in writing by OA, the cost of freight of Goods from the OA warehouse shall be paid for by the Customer.
- 9.11 Unless otherwise specified in a Quote, Goods shall be packed in OA standard packing. The cost of any special packing and packing materials required by the Customer shall be at the Customer's expense.
- 9.12 A fixed \$21.50 surcharge will be payable on the shipment of any dangerous Goods within an Order or such other surcharge amount as OA may in its absolute discretion determine is applicable to the Order as specified in the Order Confirmation.
- 9.13 A fixed surcharge will be payable for any special and/or custom Orders which alters the original products by slitting, cutting or any other alteration of the product as specified in the Order Confirmation.
- 9.14 Once the Goods are altered, no returns or cancellations will be accepted unless the Goods are deemed to be defective.
- 9.15 Where Orders are freighted on a pallet provided by OA, OA may apply a fixed pallet charge to this order based on the size of pallet required as specified in the Order Confirmation. Due to the dimensions and weight of pallet orders, OA may be required to have Goods carried by any method which it deems fit.

## 10. Inspection, Acceptance of Goods and Customer's Obligations

- 10.1 The Customer must inspect the Goods within 2 Business Days of the Delivery and, if no inspection is so made, is deemed to have accepted the Goods free of any shortages or defects.

- 10.2 The Customer has no Claim for shortages, defects or any Loss in respect of Goods apparent on inspection unless a written complaint is made to OA within 3 Business Days of the Delivery specifying the shortage, defect or Loss.
- 10.3 OA is, after receipt of the complaint, permitted to inspect the Goods and investigate the complaint. If a complaint is not made to OA in accordance with subclause 10.2, the Goods delivered will be deemed to be in accordance with the Agreement free of any shortages or defects. OA will not be held liable for any Claim or Loss regarding the use or application of the Goods and the Customer is bound to pay for them accordingly.
- 10.4 OA shall not be under any obligation to accept Goods returned by the Customer. OA will only accept the return of Goods from the Customer where:
- the Customer has complied with subclause 10.2 and OA is satisfied as to the claim by the Customer;
  - the Goods are returned to OA in the same condition as when first delivered to the Customer; and
  - OA's nominated carrier is used for the return of the Goods, unless the parties otherwise agree in writing.

#### 11. Cancellations and Returns

- 11.1 The Customer shall at no time cancel the whole or part of any Order placed without OA's prior written approval. The Customer shall not return any Goods without first providing to OA an original proof of purchase.
- 11.2 Where the Customer has ordered incorrect Goods, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is ordered, an Order exceeds the Customer's requirements, an incorrect account number is used or an Order is duplicated, the Customer may, after receiving written authority from OA, return the Goods to OA subject to the Goods being returned in the same condition as when first delivered to the Customer and subject to the Customer bearing the freight costs of the Delivery and return of the Goods.
- 11.3 Notwithstanding any other provisions of these Terms and Conditions, the Customer shall not return any Goods which have been custom made, custom cut, custom processed or custom acquired. Under no circumstances will Goods be accepted or exchanged if its container has been opened or the label on it damaged or, the goods have been used.
- 11.4 The Customer shall in all cases pay to OA a restocking fee of \$25.00 per invoice on all returns.
- 11.5 Where Goods are returned to OA in accordance with the provisions of this clause, OA may issue a credit note in respect of any amounts paid by the Customer in respect of those Goods, less restocking fee and relevant freight costs. Goods will not be accepted as a return after 90 days post-Delivery.

#### 12. Exclusions

- 12.1 The Customer shall rely on its own knowledge and expertise in selecting Goods and/or Services for any purpose, and any advice given by or on behalf of OA shall be accepted at the Customer's risk.
- 12.2 OA shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to the manufacture, design, fabrication, transportation, installation, removal and/or any other particular intended use of the Goods and/or Services) which are not precisely, accurately and completely communicated in writing to OA prior to the Customer entering into this Agreement.
- 12.3 OA shall not be liable nor responsible for any defects, Claims or Losses caused by the misuse, abuse, neglect, repair or alteration of the Goods and/or Services by the Customer or an accident of the Customer.
- 12.4 OA shall not be liable nor responsible for any technical advice, recommendations or assistance provided to the Customer (whether under the OA OCS Warranty Program, any technical data sheets, any related documents or otherwise) in relation to the use or application Goods and/or Services whatsoever, provided that OA has supplied the Goods and/or Services with due care and skill, and without defects, to the Customer and any materials supplied in relation to the Goods and/or Services are fit for the purpose for which they are supplied.

#### 13. Indemnity

- 13.1 The Customer agrees to indemnify OA (including its officers, servants and agents) and keep them indemnified against all Claims or Losses which they or either of them incurs, suffers or is held liable for in respect of:
- any acts of the Customer, including any unlawful or wrongful act or omission of the Customer, which has the effect or consequence of rendering OA liable to any third party or consumer under any Law;
  - any breach by the Customer of this Agreement or the OA OCS Warranty Program, including any tort or negligence by the Customer in connection with this Agreement or the OA OCS Warranty Program;
  - any third-party claim arising directly or indirectly from:
    - a breach by the Customer of any of its obligations or warranties under this Agreement or the OA OCS Warranty Program; or
    - a negligent, wilful or otherwise wrongful act or omission of the Customer or any of its employees, contractors or agents;
  - fraudulent or dishonest acts or omissions of the Customer or any of its employees, contractors or agents;
  - any breach by the Customer of any applicable Laws or any rules, OA's recommendations under the OCS Warranty Program or otherwise, guidelines or codes of conduct;
  - any breach by the Customer of its obligations or warranties under this Agreement or the OA OCS Warranty Program;
  - the death of, or personal injury to, any person, to the extent caused by any act or omission of the Customer or any of its employees, contractors or agents;

- any damage to, or loss or destruction of, any real or tangible personal property, to the extent caused by any act or omission of the Customer or any of its employees, contractors or agents; and
- any legal costs, charges and expenses arising in respect of subparagraphs (a)-(h) above on a full indemnity basis.

#### 14. Limitation of Liability

- 14.1 The Customer acknowledges and confirms that it is purchasing the Goods on a wholesale basis to on-sell or re-supply to the Customer's customers and that as such the Customer may not be entitled to any or all of the consumer guarantees under the *Competition and Consumer Act 2010* (Cth) ("**Australian Consumer Law**"). If the Customer is deemed a "Consumer" under the Australian Consumer Law, the Australian Consumer Law may imply into these Terms and Conditions warranties or conditions and impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions. For example, for major failures with the Services, the Consumer is entitled to cancel the Agreement with OA and to a refund for the unused portion, or to compensation for its reduced value. The Consumer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Consumer is entitled to have the failure rectified in a reasonable time. If this is not done the Consumer is entitled to a refund for the Goods and to cancel the Agreement for the Service and obtain a refund of any unused portion. The Consumer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services. All other conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, including, but without limitation, any conditions or warranties as to merchantability, fitness for purpose or correspondence with description, under this Agreement, are excluded to the greatest extent permitted by law.
- 14.2 In the event that OA breaches its obligations under this Agreement or at Law, then, to the greatest extent permitted by law, its liability is limited to any one or more of the following at its sole and absolute discretion (unless the Customer is entitled to a different remedy under the OA OCS Warranty Program for a breach of warranty):
- the replacement of the Goods and/or Services or the supply of equivalent Goods and/or Services;
  - the payment of the cost of replacing the Goods and/or Services or acquiring equivalent Goods and/or Services;
  - the repair of the Goods and/or Services;
  - the payment of the cost of having the Goods and/or Services repaired;
  - the re-supply of Goods and/or Services; or
  - the payment of the cost of having the Goods and/or Services re-supplied to the Customer.
- 14.3 To the greatest extent permitted by law, the Customer acknowledges and agrees that OA is not liable to the Customer to the extent of any exclusions of liability (whether expressed or arising by implication) under the OA OCS Warranty Program.
- 14.4 The total liability of OA under these Terms and Conditions is, to the greatest extent permitted by law, expressed in this clause 14 and OA will under no circumstances be liable to the Customer for any Claim or Loss incurred by the Customer or any other party resulting directly or indirectly out of the supply by OA to the Customer of any Goods and/or Services or out of any breach by OA of these Terms and Conditions, unless arising from the negligence of OA.
- 14.5 The Customer acknowledges and agrees that it must notify OA in writing without delay of any purported defect/s with the Goods and/or Services or any Claim or Loss suffered or likely to be suffered by the Customer as a result of any purported defect or breach of this Agreement by OA. Any product claims lodged by the Customer must quote the OA batch number. Any such claims submitted without a batch number may be deemed defective, unable to be assessed and rejected by OA at its discretion.
- 14.6 Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by Law where to do so would render these Terms and Conditions void.

#### 15. Force Majeure

Neither party will have any liability to the other party or be deemed to be in breach of this Agreement for any delays or failures in the performance of this Agreement which result from circumstances beyond the reasonable control of the party. If a party is affected by any such circumstances, then that party shall promptly notify the other party in writing when such circumstances cause a delay or a failure in the performance of this Agreement and when they cease to do so. If such circumstances continue for a period of more than seven (7) days, either party may terminate this Agreement by notice to the other party or continue with the Agreement on terms the parties may otherwise agree in writing.

#### 16. Default

- 16.1 The Customer commits a substantial breach of this Agreement if:
- the Customer commits a Default Event;
  - the Price or any moneys payable by the Customer under this Agreement is not paid to OA on the due date;
  - the Customer fails to comply with a fundamental term of this Agreement;
  - the Customer fails to follow any reasonable and lawful directions of OA;
  - OA has evidence that the Customer is acting, or has acted, illegally or is, or has, engaged in illegal activity; or
  - OA has evidence that the Customer has caused a person harm or has caused, or is intending to cause, OA harm.
- 16.2 No prior demand is required to be made by OA to the Customer for the payment or performance of any term of this Agreement.



16.3 If the Customer commits a substantial breach of this Agreement, OA may by written notice to the Customer and without prejudice to another rights OA may have, suspend or terminate an Order, cease further deliveries and may retain any monies paid by the Customer in relation to the Order and apply such monies against any Claim or Loss incurred by OA in relation to the default or breach of this Agreement by the Customer.

#### 17. Termination

- 17.1 Without prejudice to any other rights or remedies available to the parties under this Agreement, either party may terminate this Agreement at any time after giving the other party one (1) month's written notice of termination or with immediate effect after giving notice if the party commits a substantial breach of the Agreement. If OA commits a substantial breach of this Agreement, and the Customer terminates the Agreement, OA will be entitled to be paid by the Customer for all Goods and/or Services supplied, or to be supplied, to the Customer pursuant to any existing Order/s, including the Price, fees and charges incurred, or to be incurred, by OA, to the date of termination of the Agreement by the Customer.
- 17.2 If either party breaches a simple term of this Agreement and fails to remedy such breach within seven (7) days after receiving notice of such a breach, either party may by notice terminate this Agreement with immediate effect.
- 17.3 Notwithstanding anything elsewhere contained in this Agreement either party may terminate this Agreement immediately by giving written notice to the other party if the recipient party has breached any Law then applying to this Agreement or does any act or omits to do any act that could cause the terminating party to be in breach of any Law.
- 17.4 Termination of this Agreement does not extinguish, or otherwise affect, any rights of any party to this Agreement against the other which:
- accrued before the time at which the Agreement was terminated; or
  - otherwise relates to or may arise at any future time from any breach or non-observance of obligations under this Agreement, which arose before the time at which this Agreement was terminated.

#### 18. Severability

Unenforceability of a provision of this Agreement does not affect the enforceability of any other provision. If any provision is void, voidable or unenforceable, it will be severed from the Agreement to the extent of the inconsistency.

#### 19. Notice

- 19.1 A notice or other communication to a party under this Agreement must be in writing and delivered to that party in one of the following ways:
- delivered personally; or
  - posted by prepaid post to their address for service (or an address as notified by the party or the party's solicitor in writing from time to time) when it will be treated as having been received on the 3<sup>rd</sup> Business Day after posting; or
  - sent by email to their email address, when it will be treated as received when it is transmitted.

#### 20. Authority

Each party represents and warrants to the other party that it has the power and authority to enter into and perform this Agreement and to execute the obligations assumed or imposed upon it under this Agreement. If this Agreement is signed on behalf of the Customer then the person signing covenants that they have the authority to sign this Agreement as a duly authorised agent of the Customer and accepts personal responsibility and liability for the performance of this Agreement.

#### 21. Assignment and Subcontracting

- 21.1 OA may assign any or all of its rights and obligations under this Agreement to any other party at any time after giving notice to the Customer but without the need to obtain any approval from the Customer. OA may subcontract the whole or any part of the provision of Goods and/or Services under this Agreement to suitably qualified professionals, save that OA remains liable to the Customer for the Goods and/or Services under this Agreement.
- 21.2 The Customer must not, without the prior written approval of OA:

- mortgage, charge or otherwise encumber the Customer's rights, interests or entitlements under this Agreement; or
- assign or transfer the Customer's rights, interests or entitlements under this Agreement.

#### 22. Waiver and Variation

- 22.1 The failure, delay or omission by a party to exercise any power or right conferred upon that party by this Agreement will not operate as a waiver of that power or right, nor will any single exercise of any power or right preclude any other future exercise of the power, or the exercise of any other power or right under this Agreement.
- 22.2 A waiver of any provision of this Agreement must be in writing and signed by all parties and is effective only to the extent for which it is given.
- 22.3 Unless otherwise provided by this Agreement, any variation to the provisions of this Agreement must be in writing and signed by all parties.

#### 23. Relationship of the Parties

Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to a joint venture, partnership, employment relationship, franchise, agency, fiduciary or any other such relationship between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall share or be responsible for the debts and liabilities of the other party nor have the authority to legally bind the other in any manner.

#### 24. Privacy Policy

The Customer agrees that any personal information, sensitive information and/or credit-related information about the Customer may be collected, stored, used and/or disclosed, or otherwise dealt with, in any way permitted under the ORAFOL Australia Privacy and Credit Reporting Policy (which may be accessed at: [https://www.orafol.com/fileadmin/australia/orafol\\_australia\\_privacy\\_credit\\_reporting\\_policy.pdf](https://www.orafol.com/fileadmin/australia/orafol_australia_privacy_credit_reporting_policy.pdf)) or as otherwise permitted under the Law. By accepting these Terms and Conditions, the Customer acknowledges and confirms that it has read, understood and unconditionally accepts the terms of the ORAFOL Australia Privacy and Credit Reporting Policy.

#### 25. General

- 25.1 This Agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 25.2 In reselling, maintaining or installing Goods, the Customer is not OA's agent or the agent of the manufacturer of the Goods.
- 25.3 The Customer must protect, keep confidential and not disclose OA's Confidential Information to any person, except to the extent that:
- OA consents to the disclosure;
  - any information that is or becomes publicly available (otherwise than by a breach of confidentiality by the Customer under this Agreement);
  - the disclosure is made on a confidential basis to the officers, employees, auditors or lawyers of the Customer;
  - the disclosure is necessary to comply with any applicable Law or an order of a Court or tribunal; and
  - the disclosure is necessary to comply with a directive or request of any government agency.
- Any disclosure made under this subclause must be made on the basis that the receiving party must protect and keep the information strictly confidential as required by this subclause under the Agreement.
- 25.4 If the Customer now or at any time in the future enters into this Agreement as a trustee, the trustee acknowledges and covenants that all the provisions of this Agreement are binding on the trustee both personally and in the trustee's capacity as trustee and are binding on the trustee's successors as trustee of the relevant trust fund. The trustee's liability will remain irrespective of any insufficiency in or lack of recourse to trust assets.