

CUSTOMER ACCOUNT AND SALE TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 **this Agreement** means the Customer Account Application, these Terms and Conditions, and all Collateral Documents; **Business Day** means a day when the banks are open for trading and excludes Saturdays and Sundays and any public holidays in the jurisdiction pursuant to clause 27.1; **Collateral Documents** means any Sale Delivery Dockets, Offers to Purchase, invoices, guarantees or other documents which form or describe the subject matter of an agreement entered into in accordance with this Agreement, but does not include any descriptions, illustrations and performances contained in catalogues, price lists and advertising material; **Customer** means the customer purchasing the Products as set out in the Customer Account Application, and when used, the words "you" and "your" are references to the Customer; **EPC** means Express Pallets and Crates Brisbane Pty Ltd A.C.N. 010 949 176, ABN 67 166 762 785 and its subsidiaries, successors, assigns and associated companies and their servants and/or agents, and when used, the words "we", "us", and "our" are references to EPC; **Guarantor** means the person or persons stated in the Customer Account Application and/or any party who provides a guarantee to EPC in relation to the Customer's performance of its obligations under this Agreement; **Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event; **Interest Rate** means the rate of 4% per annum above the Cash Rate Target specified from time to time by the Reserve Bank of Australia; **Payment Date** means 30 days from the end of invoice month; **Products** means all products supplied sold or hired, or to be supplied or sold, by EPC to the Customer at the Customer's request; **Real Property** means all real property interests held by the Customer and/or the Guarantor now or in the future; **Sale Delivery Docket** means EPC's sale docket provided upon delivery listing the Products purchased by the Customer from EPC at the Customer's request; **Terms and Conditions** means these Customer Account and Sale Terms and Conditions.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 These Terms and Conditions apply to all dealings between us and you under this Agreement and, without limiting the generality of the foregoing, will apply to:-
- Offers to Purchase (as defined in clause 4.2 herein); and
 - Purchase Agreements (as defined in clause 5.2 herein).

3. CREDIT

- 3.1 EPC, in its absolute discretion, may refuse to proceed with this Agreement at any time, or refuse to extend credit, if the Customer's credit is or becomes unsatisfactory to EPC.

4. OFFER TO PURCHASE

- 4.1 You may from time to time offer to purchase Products from us.
- 4.2 Each such order shall constitute an offer by you to purchase from us the Products specified in such order upon the terms and conditions referred to in Clause 5.2 herein. Each such offer is, in this Agreement, called an "Offer to Purchase".
- 4.3 We may require you to provide documents or further information as part of the Offer to Purchase and, if we do so, we shall not be obliged to consider an Offer to Purchase until such documents and further information have been provided.
- 4.4 An Offer to Purchase may be revoked by you within 2 business days from the date that the Order to Purchase is received by us, but if written notice of revocation from you is not actually received by us prior to this time, the revocation shall be ineffective and you shall be bound by the Purchase Agreement.

5. CONSIDERATION AND ACCEPTANCE OF OFFER TO PURCHASE

- 5.1 Provided you or any Guarantor are not in breach of this Agreement, or any other agreement between you or the Guarantor and us, we shall consider each Offer to Purchase but shall not be obliged to accept any Offer to Purchase, and we may accept any Offer to Purchase on the terms and conditions comprising the Purchase Agreement (defined in Clause 5.2 herein) or such other terms and conditions as we in our absolute discretion think fit and agree with you.
- 5.2 If we decide to accept an Offer to Purchase, acceptance shall be constituted by delivery of the Products, and an agreement (in this Agreement called the "Purchase Agreement") shall have been entered into between us and you in relation to the Products ordered on the terms and conditions contained herein and the Sale Delivery Docket.
- 5.3 EPC reserves the right to amend the price of any Products the subject of the Offer to Purchase at any time up to delivery.
- 5.4 Within a reasonable time after receipt of the Offer to Purchase, and with you being notified, EPC may, for any reason, decide not to supply the Products the subject of the Offer to Purchase, and EPC is not liable to you for any loss or damage suffered as a result of the non-supply.

6. DELIVERY

- 6.1 Delivery is taken to be when the Products leave EPC's premises, either by collection by you or by delivery pursuant to your specific request.
- 6.2 You must pay all delivery charges incurred at cost plus sales tax/GST and other relevant charges prevailing at that time.

7. WARRANTY OF EPC

- 7.1 EPC warrants that at the time the Products leaves its premises, EPC has taken all reasonable care to ensure that the Products are in working order and condition, however, EPC is not liable or responsible for any latent defects in the Products or any loss or damage caused whilst in transit to the Customer's location.

8. RISK

- 8.1 Notwithstanding any arrangements that may have been made for the transportation of the Products to the Customer's nominated destination, risk in the Products passes to the Customer on delivery.

9. PAYMENT

- 9.1 Payment of every invoice issued by us to you under this Agreement is due on the Payment Date.
- 9.2 The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by us to any commercial or mercantile agent and dishonour fees) incurred by us in connection with the recovery of overdue amounts and enforcing the charge in clause 10.

10. CHARGE

- 10.1 As security for any amounts due to us from time to time, the Customer and/or Guarantor charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to us.
- 10.2 Without limiting the generality of the charge in clause 10.1, the Customer and/or Guarantor agrees, on request by us, to execute any documents and do all things reasonably required by us to perfect the charge given in clause 10.1 including registering a mortgage security over any Real Property. If the Customer fails to do so within seven (7) days of being so requested, the Customer and/or Guarantor appoint any credit manager or solicitor engaged by EPC to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer authorises the attorney appointed pursuant to this clause to enter into conflict transactions within the meaning of the *Powers of Attorney Act 1998*.
- 10.3 The Customer indemnifies us, on an indemnity basis, against all costs and expenses incurred by us in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.
- 10.4 The Customer unconditionally consents to us lodging a caveat or caveats noting its interest in any Real Property.

- 10.5 A statement in writing signed by our authorised officer setting out the moneys due or owing to us at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- 11. INTEREST**
- 11.1 The Customer is liable to pay EPC the Interest Rate on the balance of all amounts invoiced for Products sold or hired to the Customer under this Agreement and any Purchase Agreement remaining unpaid from time to time; however, such liability is waived by EPC where payments are made on or before the Payment Date, or as otherwise agreed by EPC in writing.
- 12. RETENTION OF TITLE**
- 12.1 We retain legal and equitable title in any Products supplied to the Customer until payment in full for or in connection with the supply of the relevant Products has been received by us. Until payment in full has been received, the following terms in this clause 12 apply.
- 12.2 Notwithstanding that title in the Products remains with us until payment has been received in full, you may sell such Products or use the Products in the ordinary course of your business. As between the Customer and the purchaser of any item of the Products, the Customer sells as principal and not as our agent. The proceeds of sale of each item of the Products must be held by the Customer in a separate fund on trust for us and the Customer is under a duty to account to us for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to us for the Products supplied.
- 12.3 Until the Products are sold or used by the Customer, the Customer must keep the Products safe and free from deterioration, destruction, loss or harm, clearly designate the Products as EPC's property, store them in such a way that they are clearly identified as the property of EPC and keep full and complete records, firstly of the physical location of the Products and, secondly, the ownership of the Products by EPC.
- 12.4 We are irrevocably entitled at any time and from time to time before sale of any item of Products by the Customer to inspect or to recover and retake possession of such Products and otherwise exercise in relation to the Products any of its rights whether those rights are as owner and / or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, EPC and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those any third party. The Customer agrees to obtain the consent of any such third party to such entry by EPC and to indemnify EPC and its agents for any liability arising from any entry upon such third parties' premises or vehicles. EPC and its agents agree to take all reasonable care in removing the Products from such premises or vehicles but, to the extent that this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Products.
- This reservation of title and ownership is effective whether or not the Products have been altered from their supplied from, or commingled with other Products.
- 13. SECURITY INTEREST**
- 13.1 The retention of title arrangement described in clause 12 constitutes the grant of a purchase money security interest by the Customer in favour of EPC in respect of all present and after acquired Products supplied to the Customer by EPC.
- 13.2 The Customer must immediately, if requested by EPC, sign any documents, provide all necessary information and do anything else required by EPC to ensure that EPC's purchase money security interest is a perfected security interest.
- 13.3 The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Products or any proceeds from the sale of the Products until EPC has perfected its purchase money security interest.
- 13.4 For any Products supplied that are not good that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of sections 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- 13.5 The Customer hereby waives any rights the Customer may otherwise have to:
- Receive any notices the Customer would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135.
 - apply to the Court for an order concerning the removal of an accession under section 97;
 - object to a proposal of the Customer to purchaser of retain any collateral under sections 130 and 135;
 - Receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relation to any security EPC may have in the Products supplied to the Customer from time to time.
- 13.6 For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meaning given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.
- 14. CUSTOMER OBLIGATIONS**
- 14.1 If the Customer fails to comply with any of the terms herein in respect of any obligation to pay money to EPC when due, suffers an Insolvency Event or makes any misrepresentation to EPC, the balance of the Customer's account to EPC will become due and payable immediately.
- 14.2 The Customer agrees that it must:
- pay, without any deduction or setoff, the price charged by EPC for the Products supplied to the Customer on delivery;
 - pay any stamp duty assessed on this document or fee to register or maintain any security interest held by EPC in respect of the Products supplied to the Customer;
 - advise EPC in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two (2) Business Days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change or step the Customer remains liable to pay the price for all Products supplied.
- 15. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS AND INDEMNITY**
- 15.1 In signing this Agreement, and in making an Offer to Purchase, you shall be deemed to have warranted, represented, acknowledged and agreed as follows:
- EPC's acceptance of an Offer to Purchase was made in Queensland;
 - the person who made the Offer to Purchase was authorised by you to do so
 - you have read and understand and wish to be bound by the full terms, conditions and effect of this Agreement;
 - the person who signed this Agreement was authorised by you to do so;
 - any Purchase Agreement entered into pursuant to any Offer to Purchase shall be valid and binding on you, notwithstanding the making or serving of any such Offer or purported Offer was forged or fraudulent or was procured in excess of or without your authority;
 - the particulars contained in this Agreement are in all respects true and correct;
 - you have relied solely on your own skill and judgement in entering into this Agreement, and selecting the Products ordered by you;
 - we have not made any representation or promise to you of any nature, whether regarding your rights under this Agreement or otherwise, in respect of any matter arising out of this Agreement, including the entering into of this Agreement;
 - this Agreement represents the entire agreement as concluded between us and you, and supersedes any other agreement, terms and/or conditions between us and you;
 - no representations made by us or you concerning the Products shall be an implied term of this Agreement or form the subject matter of a separate agreement, subsidiary or collateral with this Agreement; and
 - You have not been induced to enter into this Agreement by any representation, oral or otherwise, made for or on behalf of EPC.

15.2 You agree to indemnify us in respect of any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs on an indemnity basis, incurred or suffered by or brought or made or recovered against us in connection with a breach of any warranty, representation, acknowledgement or agreement contained in this clause, or by reason of any of them being in any way incorrect, inaccurate, misleading or deceptive.

16. AMENDMENTS

16.1 If we wish to make any amendment to this Agreement, we may provide you in writing with notice of the amendment and a copy of this Agreement as amended ("**Amended Agreement**"). This Agreement shall be deemed to be amended as from the time of acceptance by you of the Amended Agreement ("**the Relevant Time**") by the substitution of the Amended Agreement in place of the then current Agreement.

16.2 You shall be deemed to have accepted the Amended Agreement unless you notify us in writing of your non-acceptance within seven (7) days of our provision to you of the Notice contemplated by sub-clause 1 above.

16.3 Any acceptance of the Amended Agreement shall be effective and shall apply in respect of all Purchase Agreements and Hire Agreements entered into upon our acceptance of Offers to Purchase made by you after the Relevant Time, but shall not affect any Purchase Agreement entered into or accepted by us prior to the Relevant Time.

16.4 No amendment or variation of the Purchase Agreement is valid or binding on EPC unless agreed to in writing by EPC.

17. SALE OF GOODS ACTS

17.1 The Purchase Agreement is not subject to the provisions of the *Sale of Goods Acts* in each jurisdiction of Australia, the operations of which are hereby expressly excluded.

18. TERMINATION

18.1 Either you or us may at any time by written notice served on the other and the Guarantor terminate this Agreement in respect of transactions which at time of service have not resulted in a Purchase Agreement being entered into, so that as from such time, your right to make Offers to Purchase and the obligation for us to consider such Offers under and in accordance with this Agreement shall cease. Termination shall not affect the rights and liabilities of the parties in respect of this Agreement accrued as at the time of termination.

19. PROPRIETARY RIGHTS

19.1 EPC will retain all copyright and other proprietary rights in any EPC confidential information and any EPC material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the EPC information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, any material or their contents or any information relating to them or the Products without EPC's written consent.

20. GUARANTEE

20.1 In consideration of EPC at the request of you and the Guarantor entering into this Agreement and to induce us to enter into this Agreement and any Purchase Agreement, the Guarantor guarantees to us the due and punctual performance and observance by you of all the terms and conditions of this Agreement, which are to be performed and observed by you including, without limiting generality of the foregoing, the payment by you to us of all monies payable by you under this Agreement. The Guarantee shall apply separately to this Agreement.

21. EXCLUSION OF IMPLIED TERMS

21.1 The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into the this Agreement or in connection with the supply of any of the Products by EPC under law or custom or international convention are excluded.

22. LIMITATION OF LIABILITY

22.1 To the maximum extent permitted by law and subject to clauses 21 and 23, EPC's total liability arising out of or in connection with its performance of its obligations pursuant to this Agreement or arising out of or in connection with the supply of specific Products (including pursuant to or for breach of this Agreement or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) EPC shall have no liability to the Customer for any consequential loss;
- (b) EPC's total aggregate liability for any loss or damage, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to EPC for the specific Products that give rise to the loss or damage in question. The limitations and exclusions in this sub-clause do not apply to the extent that any loss or damage is directly attributable to:
 - (i) The personal injury or death caused by EPC's default, breach of these Agreement or EPC's negligence; or
 - (ii) Fraud by EPC.

22.2 Each party must take reasonable steps to mitigate any loss or damage it suffers or incurs.

23. LIMITATION OF LIABILITY UNDER AUSTRALIAN CONSUMER LAW GUARANTEES

23.1 To the extent that the Products are supplied by EPC are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that EPC's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under section 51 (title), section 52 (undisturbed possession) and section 53 (undisclosed securities), is limited to, at the option of EPC, one or more of the following:

- (a) replacement of the Products or the supply of equivalent Products;
- (b) the repair of the Products;
- (c) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
- (d) Equivalent Products; or
- (e) the payment of the cost of having the Products repaired.

24. COSTS

24.1 Stamp duty, registration fees, taxes (including any goods and/or services taxes) or any other kinds of government charge, or fee, incurred as a result of the hire or sale of the Products by EPC to the Customer under this Agreement shall be paid by the Customer.

24.2 The Customer shall pay any losses, expenses, damages, commissions, interest and costs, including solicitor and own client legal costs, arising from the Customer's failure to comply with its obligations, including payment of all invoices, under this Agreement and any Purchase Agreement. Such losses, expenses, damages, commissions, interest and costs may be recovered as a liquidated debt.

25. GST

25.1 In this clause:-

- (a) "GST" means GST within the meaning of the GST Act;
- (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended); and
- (c) Expressions used have the meanings given to them in the GST Act.

25.2 An amount payable by a party under this Agreement in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

- 25.3 If this Agreement requires the Customer to pay, reimburse or contribute to an amount paid or payable by EPC in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by EPC plus, if its recovery from the Customer is a taxable supply, the GST payable in respect of that supply.
- 25.4 A party is not obliged, under sub-clauses 2 or 3 above, to pay the GST on a taxable supply to it under this Agreement, until that party is given a valid tax invoice for the supply.
- 26. PRIVACY**
- 26.1 In accordance with the provisions of the National Privacy Principles in force at the date of signing this Agreement ("**the Privacy Principles**"), if EPC considers it relevant to assessing the Customer Account Application, the Customer consents to EPC obtaining from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by EPC.
- 26.2 In accordance with the provisions of the Privacy Principles, if EPC considers it relevant to collecting overdue payments in respect of credit provided to the Customer, the Customer agrees to EPC receiving from a credit reporting agency a credit report containing personal information about the Customer.
- 26.3 The Customer authorises EPC to give a credit reporting agency personal information about the Customer relating to this Agreement.
- 26.4 We will comply with our Privacy Statement in our dealings with you. Our Privacy Statement is available at www.expresspallets.com.au
- 27. TIME**
- 27.1 Subject to the terms of this Agreement, time shall be of the essence unless the parties agree in writing to any time requirements being extended or abridged in which event the time so extended or abridged shall be of the essence of this Agreement.
- 27.2 If any day appointed or specified by this Agreement before the payment of any money falls due on a day on which trading Banks are not open for business in Queensland, being the Australian State in which it was accepted by us, the day so appointed or specified shall be deemed to be the day next following the day so appointed or specified on which Australian Banks are open for business in Queensland.
- 28. COSTS**
- 28.1 The Customer shall pay any losses, expenses, damages, commissions, interest and costs, including solicitor and own client legal costs, arising from the Customer's failure to comply with its obligations, including payment of all invoices, under this Agreement and any Purchase Agreement.
- 29. MISCELLANEOUS**
- 29.1 This Agreement and every Purchase Agreement shall be governed by and construed in accordance with the laws of and applicable to Queensland, which you acknowledge as being the Australian State in which this Agreement was accepted by us, and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
- 29.2 All notices and other written communications provided for in this Agreement shall be given or served by certified or registered mail with postage pre-paid, by hand delivery, email or by facsimile transmission as follows:-
- (a) if to EPC, to us at 65-71 Boundary Road Narangba 4504, fax: (07) 3204 0768, c/- email office@expresspallets.com.au]; and addressed to relevant person
- (b) if to the Customer, to you at the address and facsimile number and email address contained in this Agreement or any Purchase Agreement.
- 29.3 Where the Customer comprises more persons than one, the provisions of this Agreement shall bind all of those persons severally and jointly. In any claim arising out of a breach of this Agreement, or any Purchase Agreements, proportionate liability will not be pleaded in defence by the Customer as between those persons and each of those persons comprising the Customer shall be regarded as wholly liable to EPC in respect of any such breach.
- 29.4 Any waiver by us of any default by you in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement, or any delay by us in exercising any remedies available to us under this Agreement, will not constitute a variation or waiver of any provision, condition or requirement of this Agreement, or remedy available to us.
- 29.5 If any term or provision of this Agreement or any Purchase Agreement found to be to be invalid, illegal or unenforceable, such term or provision is to be severed from the remainder of the terms and provisions of this Agreement and is to be deemed never to have been part of this Agreement, with the remainder of the terms and provisions of this Agreement and any Purchase Agreement subsisting and remaining in full force and effect unless the basic purpose or purposes of this Agreement would thereby be defeated.
- 29.6 To the extent of any inconsistency in this Agreement, these Terms and Conditions prevail, and the other terms and conditions in all Purchase Agreements and Collateral Documents are to be construed so as to give paramount effect to these Terms and Conditions.