

**NEW ZEALAND TERMS OF SALE – PACKAGING NZ**

The following terms govern all Orders placed by the Buyer and will be incorporated into each contract entered into between the Buyer and Oji Fibre Solutions (NZ) Limited ("Ojifs") for the supply of the Goods.

**1. PRICE AND ORDERS**

- 1.1 **Orders:** The Buyer orders with Ojifs in accordance with Ojifs's processes as advised to the Buyer from time to time. Ojifs may, at its discretion, reject any Order, and an Order is accepted only when Ojifs issues an Order Acknowledgement. Once accepted, the Buyer may not cancel or change its Order without Ojifs's approval.
- 1.2 **Buyer duty to verify:** The Buyer is responsible for verifying that all details shown on the Order Acknowledgement are correct. The terms of the Order Acknowledgement will be binding unless the Buyer notifies Ojifs in writing of any discrepancy within 48 hours of its receipt.
- 1.3 **Price:** The Buyer will pay to Ojifs the Price for the Goods in accordance with clause 2. The Buyer's obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.
- 1.4 **Tax exclusive:** Unless expressly included in the Price, the Price excludes Taxes.
- 1.5 **Change to Price:** Ojifs may change the Price for the Goods at any time on giving prior notice to the Buyer. Any change to the Price will apply to all the Goods delivered on or after the date specified by Ojifs in the notice to the Buyer. If no date is specified in the notice, the change will be effective immediately for all Goods delivered after the date of notification, and whether or not an Order for the Goods had already been received and accepted prior to the change.
- 1.6 **Charge for inaccurate or changed Order:** Ojifs may charge the Buyer a reasonable fee where Ojifs incurs additional work as a result of lack of precision in the Buyer's specifications or if the Buyer alters the specifications after the date of the relevant Order.

**2. PAYMENT**

- 2.1 **Payment terms:** Payment of the Price is to be made by such method as Ojifs nominates from time to time and is due by the 20th of the month following the date of Delivery.
- 2.2 **No setoff:** The Buyer may not withhold payment or make any setoff or deduction from any Amount Owing without Ojifs's prior written consent.
- 2.3 **Application of Payments:** Ojifs may apply any payments received in reduction of the Amount Owing as Ojifs thinks fit.
- 2.4 **Default interest:** If the Buyer does not pay the Price by the due date, Ojifs may charge interest calculated at a rate per annum equal to 7% above the 30 day NZD bank bill rate at 10.45am on the due date, and calculated on a daily basis on the Amount Owing from due date until payment in full, plus GST (and such rate shall be chargeable both before and after any judgment is obtained).

**3. PACKAGING**

- 3.1 **Packaging charge:** Where the Buyer requires the Goods to be packaged, Ojifs may charge for the cost of packaging in addition to the Price.
- 3.2 **Packaging terms:** Ojifs may use in the delivery and packaging of the Goods, pallets, layer boards, cartons, boxes, returnable crates or other forms of packaging. That packaging may be:
  - (a) hired, and the hire charges will be to the account of the Buyer from Delivery;
  - (b) non-returnable; or
  - (c) provided subject to the Buyer paying a deposit.
- 3.3 **Restriction on re-use:** The Buyer must at all times retain possession of any items belonging to Ojifs which have been used for delivering and packaging the Goods, and must not use them for delivering or packaging other goods.
- 3.4 **Pallets:** The Buyer acknowledges that any pallets used for delivery of the Goods are held by the Buyer as bailee, unless otherwise agreed by the parties. Subject to such agreement:
  - (a) the Buyer agrees to indemnify Ojifs against any costs, loss, damages, claim or other expense incurred or suffered by Ojifs and arising from any pallet not being returned to Ojifs in good order and condition within twenty-eight (28) days of Delivery of the Goods; and
  - (b) if the Buyer returns any pallets to Ojifs later than one year after the pallets were provided by Ojifs to the Buyer, Ojifs will be under no obligation to refund the Buyer any amounts in respect of those pallets.
- 3.5 **Deposit:** If required by Ojifs, the Buyer will pay a deposit (being an amount reasonably determined by Ojifs) to Ojifs in respect of pallets or other packaging of the Goods. Such deposit will be refunded to the Buyer upon return of the applicable packaging to Ojifs in good order and condition.
- 3.6 **Pallet transfer, hire and exchange:** If the Buyer requests, Ojifs may, in its absolute discretion, arrange for the transfer or hire of pallets to the Buyer and further, may allow pallets to be exchanged on a one-for-one basis at a depot to be nominated by Ojifs.

**4. DELIVERY**

- 4.1 **Basis for delivery:** The Goods are to be delivered on the basis (as defined in Incoterms 2010) specified in the Order Acknowledgement. To the extent that any provisions of these Terms are inconsistent with any incorporated provisions of Incoterms 2010, these Terms shall prevail.
- 4.2 **Time for delivery:** Any time advised for Delivery is an estimate only. Ojifs will use reasonable endeavours to deliver the Goods in accordance with the estimate, but is not liable for any delay.
- 4.3 **Unloading Goods:** In all circumstances, the Buyer will be responsible at its cost for unloading the Goods from the relevant delivery vehicle.
- 4.4 **Installments:** Ojifs may deliver the Goods by instalments. Each instalment will be treated as a separate contract under these Terms.
- 4.5 **Tolerance:** Ojifs may deliver up to 20% more or less than the quantity of the Goods ordered and the Buyer agrees to accept and pay for the quantity delivered.
- 4.6 **Delivery Indemnities:** The Buyer will indemnify Ojifs against any loss, liability, costs or expenses incurred by Ojifs as a result of, or in connection with:
  - (a) delays in delivery caused by the Buyer; and
  - (b) the Buyer unloading the Goods.

**5. RISK AND SECURITY**

- 5.1 **Risk:** Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery.
- 5.2 **Ownership:** Ownership of the Goods remains with Ojifs and does not pass to the Buyer until the Buyer pays in full the Amount Owing to Ojifs in respect of the Goods.
- 5.3 **Use in the ordinary course:** Ojifs authorises the Buyer to use the Goods and sell any goods converted from the Goods in the ordinary course of its business; and
  - (a) the Buyer must not lease, create a security interest in, or mortgage any interest in the Goods or permit any lien over the Goods other than grant a general security interest in its property in favour of a reputable trading bank.
 The Buyer must not on-sell converted Goods without Ojifs approval at any time.
- 5.4 **Consequences of revoked authority:** Where the authority conferred by clause 5.3 is revoked by Ojifs (at its discretion), or an Event of Default occurs:
  - (a) the Buyer authorises Ojifs to use reasonable force to enter the premises where the Goods are stored and remove them;
  - (b) Ojifs will exercise reasonable care in entering such premises and removing such Goods, but will not be liable for trespass or any damage caused by the use of reasonable force;
  - (c) Ojifs may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as Ojifs thinks fit; and
  - (d) the Buyer is liable for all costs associated with the exercise by Ojifs of its rights under this clause and costs are payable to Ojifs on demand.
- 5.5 **Buyer obligations:** Until Ownership of the Goods passes to the Buyer under these Terms the Buyer must keep proper stock records and records of account with respect to the purchase, receipt, sale, of, and other dealings with, the Goods.
- 5.6 **Application of the PPSA:** The Buyer acknowledges and agrees that:
  - (a) Ojifs has a security interest under the PPSA in all the Goods supplied by Ojifs under these Terms and any Related Terms as security for payment of the Amount Owing (including, for the purposes of sections 71 and 72 of the PPSA, in respect of the Goods) and, for the avoidance of doubt, the proceeds of sale of the Goods for the purposes of the PPSA;
  - (b) the Buyer acknowledges that it has received value from Ojifs as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted to Ojifs under these Terms;
  - (c) these Terms and each security interest created under these Terms is a continuing security, unaffected by any intermediate payments or anything else whatsoever other than a written release signed by Ojifs and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any amounts owing to Ojifs in respect of Goods;
  - (d) no security interest created under these Terms is discharged, nor are the Buyer's obligations affected by any amendment to, or the validity or enforceability of, or failure to enforce, these Terms, or anything else whatever that, but for this clause, may have discharged these Terms or affected the Buyer's obligations under these Terms;
  - (e) the Buyer will, at its own cost, promptly provide all information and do all things that Ojifs may require to ensure that Ojifs has perfected security interests in respect of the Goods under the PPSA or otherwise to secure to Ojifs the full benefit of its intended rights under these Terms; and
  - (f) the Buyer waives its rights under the PPSA to receive copies of any verification statement or financing charge statement.
- 5.7 **Waiver:** To the extent permitted by law, the Buyer and Ojifs contract out of, and the Buyer waives its rights under section 114(1)(a) of the PPSA and the Buyer's rights referred to in sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA, and, where Ojifs has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.
- 5.8 **Change in details:** The Buyer must provide Ojifs with at least 14 days' prior written notice before changing its name, address or contact details.

**6. WARRANTIES AND LIABILITY**

- 6.1 **Sole remedies for Buyer:** In respect of Claims of any kind, to the maximum extent permitted by law:
  - (a) the Buyer and Ojifs agree that Claims shall be subject to the qualifications, exclusions, and caps contained in these Terms; and
  - (b) the sole remedies available to the Buyer against Ojifs, whether under these Terms or at law shall be, at Ojifs's discretion:
    - (i) the rework or replacement of the Goods under these Terms; or
    - (ii) payment of compensation up to the liability cap prescribed in clause 5.2.
- 6.2 **Liability cap:** Subject always to clause 6.4, Ojifs's maximum liability arising out of any Claim or under these Terms or at law (whether in contract, tort (including negligence), statute or otherwise) shall not exceed:
  - (a) where any Claim relates to Non-Conforming Goods, the Price of such Goods; and
  - (b) in any other case, NZ\$10,000.
- 6.3 **Limitation on Buyer's Claims:** No Claim relating to Non-Conforming Goods may be made against Ojifs unless:
  - (a) the Buyer gives Ojifs notice of the Non-Conforming Goods within:
    - (i) 48 hours from Delivery, where the Goods can reasonably be identified as Non-Conforming Goods on Delivery; or
    - (ii) 21 days from Delivery, where the Goods could not reasonably have been identified as Non-Conforming Goods on Delivery; and
  - (b) the Buyer follows Ojifs's claims process advised to the Buyer in writing from time to time.
- 6.4 **Exclusions of liability:** Ojifs will not be liable (whether in contract, tort (including negligence), statute or otherwise) for any:
  - (a) loss of profits, loss of use or consequential, indirect or special loss or damage of any kind;
  - (b) Claim relating to Goods that have been modified or incorrectly used by the Buyer without Ojifs's approval or which, in Ojifs's reasonable opinion, have not been stored or maintained appropriately by the Buyer; or
  - (c) technical advice or assistance given or tendered by to the Buyer whether or not in connection with the manufacture, construction or supply of the Goods for or to the Buyer.
- 6.5 **Representations must be in writing:** The only conditions, warranties, descriptions, representations or guarantees agreed to by Ojifs are those expressly provided by Ojifs to the Buyer in writing.
- 6.6 **Buyer's responsibility for artwork and origination:** For the avoidance of doubt, it is the responsibility of the Buyer to approve all artwork and origination before going to press. No claim may be brought against Ojifs in respect of such artwork and origination.

**7. CONSUMER GUARANTEES ACT 1993 and FAIR TRADING ACT 1986**

- 7.1 **Supply in trade:** The Buyer acknowledges that it is acquiring the Goods for the purposes of resupplying them in trade and accordingly the Consumer Guarantees Act 1993 (CGA) does not apply. The Buyer indemnifies Ojifs from and against any liabilities, losses, damages, costs or expenses of whatever kind and nature which arise from any Claim against Ojifs as the manufacturer of the Goods under the CGA.
- 7.2 **Contracting out of FTA:** The Buyer and Ojifs each agree, for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that they are contracting out of sections 9, 12(A) and 13 of the FTA in respect of all matters covered by these Terms.

- 7.3 **Legal advice:** Both the Buyer and Ojifs acknowledge that they have each had the opportunity to receive advice from a lawyer prior to contracting on these Terms and agree that, in the context of the matters covered by these Terms, it is fair and reasonable for them to be bound by the provisions of this clause 7.

**8. DEFAULT**

- 8.1 **Consequences of default:** If any Event of Default occurs:
  - (a) the Buyer must notify Ojifs immediately;
  - (b) Ojifs may suspend or terminate these Terms;
  - (c) any Amount Owing will immediately become due and payable notwithstanding that the due date has not arisen;
  - (d) to the extent permitted at law each security interest created by these Terms will become immediately enforceable and the Buyer must return the Goods to Ojifs promptly on request or Ojifs may take possession of and sell the Goods and Ojifs has all the rights of a natural person in relation to the Goods and all other rights conferred by law (including under Part 9 of the PPSA) in relation to the Goods; and/or
  - (e) the Buyer shall indemnify Ojifs against any direct or indirect costs, loss, expense or liability sustained or incurred by Ojifs arising from this Event of Default and/or the exercise, protection or enforcement of Ojifs's rights under these Terms or conferred by law, including any demurrage, dead freight, loss of profit, legal fees and storage or transport costs.
- 8.2 **Exercise of rights:** To the extent permitted by law, Ojifs will not be liable in respect of any loss or damage which results from the exercise, attempted exercise or non-exercise by Ojifs of its rights under these Terms or conferred by law.

**9. OWNERSHIP OF WORKS**

- 9.1 **Ownership of works:** All works produced by or for Ojifs (including, without limitation, samples, designs, artwork, silk screens, plates, films, stereo, cutting dies and moulding dies in whatever form) and any intellectual property in and to such works, remain the exclusive property of Ojifs unless otherwise agreed in writing, and Ojifs may charge the Buyer for maintenance, re-working and storage of such works.
- 9.2 **Buyer tooling:** Where the Buyer supplies, or reimburses Ojifs for the cost of, a mould, die, tool, printing plate or any artwork or other item used in the manufacturing process:
  - (a) Ojifs will not be liable for any loss or damage (whether due to the negligence of Ojifs, or its employees, agents, contractors or otherwise) of any such item;
  - (b) Ojifs reserves the right to charge the Buyer for the re-working of any such item; and
  - (c) the Buyer will reimburse Ojifs for all maintenance expenses.
- 9.3 **Exclusive property:** Where the Buyer supplies or covers the entire cost of the items listed in clause 9.1 above, Ojifs agrees that the items remain the exclusive property of the Buyer. Where the Buyer contributes towards the cost of any item listed in clause 9.2 above (but does not cover the entire cost of any such item), then the Buyer agrees that such item remains the exclusive property of Ojifs.

**10. INTELLECTUAL PROPERTY**

- 10.1 **Ojifs IP:** Any technical information, knowledge or processing methods at any time transmitted either orally, electronically or in writing by Ojifs to the Buyer and any samples, designs and artwork produced by or for Ojifs will remain Ojifs's property and will be considered absolutely confidential by the Buyer and the Buyer will not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without Ojifs's prior written consent.
- 10.2 **Warranty and indemnity against third party claims:** The Buyer warrants that the use by Ojifs of any designs or instructions supplied by the Buyer will not infringe the patents, trademarks, designs or copyright ("intellectual property") of any other person and the Buyer agrees to indemnify Ojifs against any Claim relating to or arising from the infringement of any intellectual property of any other person.
- 10.3 **Termination or suspension for infringement:** If at any time a Claim is made against Ojifs, or Ojifs becomes aware that a Claim is likely to be made against Ojifs, for infringing any intellectual property or contributing to any such infringement as a result of supplying the Goods, Ojifs may immediately terminate or suspend these Terms.

**11. USE OF INFORMATION AND PRIVACY LAW**

- 11.1 **Buyer information:** Ojifs and its Related Companies may collect from the Buyer or any other Person (including any Related Company of Ojifs and any credit or debt collection agencies) any information about the Buyer, and hold and use such information in accordance with:
  - (a) Ojifs's Privacy Policy and Credit Reporting Policy, both available at [www.ojifs.com](http://www.ojifs.com); and
  - (b) the Privacy Act 1993.
- 11.2 **Consequence of non-disclosure:** If the Buyer does not provide information requested by Ojifs, Ojifs may not be able to process the Buyer's credit application and/or supply the Goods to the Buyer on these Terms.
- 11.3 **Obligation to keep information up-to-date:** The Buyer must notify Ojifs of any change in circumstances that may affect the accuracy of the information provided by the Buyer to Ojifs or any of its Related Companies.
- 11.4 **Buyer confidentiality:** The Buyer will keep the contract to which these Terms form part and any issues, information and documentation relating to its subject matter and performance strictly confidential, and will not disclose this confidential information to anyone except as required by law or as approved by Ojifs.

**12. GENERAL**

- 12.1 **Force majeure:** Ojifs will not be liable for any delay or failure in the performance of any obligation under these Terms if the cause of such delay or failure is beyond its reasonable control.
- 12.2 **Entire Agreement:** These Terms and the Buyer's account application (if applicable) constitute the entire agreement between the parties in relation to the subject matter and supersede all previous agreements and undertakings, whether oral or written in relation to the matters covered by these Terms. Unless otherwise agreed in writing by the parties, any Goods supplied by Ojifs to the Buyer will be supplied on these Terms only. If any Order submitted by the Buyer (whether in writing, verbally or otherwise) purports to be made on or subject to terms and conditions other than these Terms, the Buyer agrees that such terms and conditions are disregarded unless otherwise agreed in writing by the parties.
- 12.3 **Waiver:** If Ojifs exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice Ojifs's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by Ojifs.
- 12.4 **Assignment:** The Buyer must not transfer or assign its rights under these Terms to anyone else without Ojifs's prior consent in writing. Any change in 50% or more of the direct or indirect shareholding of the Buyer or in the Buyer's effective control will be deemed an assignment. Ojifs may assign, novate or transfer any of its rights or obligations under these Terms (including any part of the Buyer's indebtedness to Ojifs) and the Buyer agrees to such assignment, novation or transfer. Each assignee or transferee is to have the same rights against the Buyer under these Terms as if named as Ojifs.
- 12.5 **Amendments:** Ojifs may amend these Terms from time to time, and such updated terms will be displayed at Ojifs's website ([www.ojifs.com](http://www.ojifs.com)). By continuing to order the Goods the Buyer will be deemed to have accepted these Terms (as amended).

**13. GOVERNING LAW AND DISPUTES**

- 13.1 **Governing law:** All contracts for the Goods shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.
- 13.2 **Mediation:** Either party may require any dispute arising between the parties arising out of or in connection with a contract for the Goods ("Dispute"), which has not been resolved within 20 Business Days, to be referred to mediation. The AMNZ Rules will apply to the mediation, including the appointment of the mediator. The costs and expenses of the mediator will be shared by the parties equally.
- 13.3 **Urgent relief:** The provisions of this clause 13 shall not limit or affect the right of Ojifs or the Buyer to apply to a court at any time for any interim or preliminary relief in respect of the relevant dispute.

**14. DEFINITIONS AND CONSTRUCTION**

- 14.1 **Definitions:** In these Terms, unless the context otherwise requires:
  - "Amount Owing" means, at any time, all amounts owing by the Buyer to Ojifs under these Terms, or if the context specifically provides in respect of specific Goods.
  - "Buyer" means the Person purchasing the Goods from Ojifs pursuant to these Terms.
  - "Claim":
    - (a) means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort (including negligence), statute or otherwise) arising out of or relating to the supply of the Goods; and
    - (b) includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of the Goods.
  - "Delivery" means delivery of the Goods as determined pursuant to clause 4 of these Terms.
  - "Event of Default" means an event where:
    - (a) the Buyer fails to comply with these Terms (including where the Buyer fails to pay for the Goods on or before the due date);
    - (b) the Buyer or any Related Company of the Buyer fails to comply with any Related Terms (including fails to pay any amounts before the due date); and
    - (c) the Buyer becomes bankrupt, goes or is put into liquidation, has a receiver or statutory manager appointed over its assets or any of them, becomes insolvent, ceases to carry on its business, makes any composition or arrangement with its creditors, or is deemed or perceived unable to pay its debts when they fall due.
  - "Goods" means all goods and related services and packaging supplied to the Buyer by Ojifs under these Terms and includes any services forming part of the supply of such Goods.
  - "Non-Conforming Goods" means Goods that do not conform with these Terms and/or the Order Acknowledgement.
  - "Order" means an order placed by the Buyer with Ojifs for the purchase of the Goods.
  - "Order Acknowledgement" means the acceptance of an Order communicated by Ojifs to the Buyer whether by written notification or otherwise.
  - "Ownership" means the property in and legal and beneficial ownership of the Goods.
  - "Person" includes a corporation, association, firm, company, partnership or individual.
  - "PPSA" means the New Zealand Personal Property Securities Act 1999. Terms defined in the PPSA will have the same meanings where used in these Terms unless the context otherwise requires.
  - "Price" means the purchase price of the Goods as most recently advised by Ojifs to the Buyer, and any costs payable by the Buyer under this contract relating to transportation, storage and insurance.
  - "Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993.
  - "Related Terms" means any other terms of sale, and as the context requires, each contract entered into between the Buyer or a Related Company of the Buyer and Ojifs or a Related Company of Ojifs (as the case may be) and each invoice issued by Ojifs or a Related Company of Ojifs to the Buyer or a Related Company of the Buyer (as the case may be) for Goods into which the relevant terms of sale are incorporated.
  - "Taxes" means GST and any other tax, duty or other official charges levied or assessed in connection with the supply of the Goods by Ojifs to the Buyer.
  - "Terms" means these terms of sale, as amended from time to time.
- 14.2 **Construction:**
  - (a) References to legislation include that legislation as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
  - (b) Whenever "include" or any form of that word is used, it must be construed as if it were followed by "[without being limited to]".
  - (c) A reference to Ojifs's approval shall be construed as a reference to Ojifs's prior written approval, which may be withheld at Ojifs's discretion.
  - (d) A reference to a party includes that party's authorised representatives and permitted assignees.