

Ayrypak KGP Ltd – Terms and Conditions

1. Definitions

- 1.1 “Ayrypak” means Ayrypak KGP Limited, its successors and assigns or any person acting on behalf of and with the authority of Ayrypak KGP Limited.
- 1.2 “Customers” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Ayrypak to the Customer at the Customer’s request from time to time (where the context so permits the terms “Goods” or “Services” shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus Goods and Services Tax (GST) where applicable) for the Goods as agreed between Ayrypak and the Customer in accordance with clause 7.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of goods.
- 2.2 The terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Ayrypak.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Ayrypak’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document will prevail.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Ayrypak and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Ayrypak reserves the right to refuse delivery.
- 2.6 The Customer accepts that Ayrypak shall retain the right to amend, cancel or refuse credit facilities to the Customer where the Customer fails to comply with the payment conditions, and may require the Customer to make payment on a “cash on delivery” basis.
- 2.7 Any discounts applicable to the Price or minimum spend amount, shall be null and void if payment is not made by the due date stated on the invoice and/or statement.
- 2.8 The Customer acknowledges and accepts that any orders under Ayrypak minimum order value is stipulated on Ayrypak’s Order Form or Quotation shall incur an administration fee.

3. **Electronic Transaction Act 2002**

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in the Act.

4. **Change in Control**

- 4.1 The Customer shall give Ayrypak not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s or business practice. The Customer shall be liable for any loss incurred by Ayrypak as a result of the Customer’s failure to comply with this clause.

5. **Online Ordering**

- 5.1 The Customer acknowledges and agrees that:
 - (a) Ayrypak does not guarantee the website’s performance or availability of any of its Goods; and
 - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (c) there are inherent hazards in electronic distribution and as such Ayrypak cannot warrant against delays or errors in transmitting data between the Customer and Ayrypak including orders, and you agree that to the maximum extent permitted by law, Ayrypak will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders.

5.2 Ayrpak reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of Ayrpaks Services, or violated these terms and conditions.

6. Back Orders

6.1 Where an item may be temporarily out of stock, Ayrpak shall advise the Customer within (1) working day of such and may offer the Customer the option of:

- (a) of placing a back order; or
- (b) accepting a substitute product.

6.2 Any Goods placed on back order will not be charged to the Customer until the Goods have been dispatched.

7. Price and Payment

7.1 At Ayrpak's sole discretion the Price shall be either;

- (a) as indicated on any invoice provided by Ayrpak to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Ayrpak's current price list; or
- (c) Ayrpak's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

7.2 Ayrpak reserves the right to change the Price if a variation to Ayrpak's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, stock availability, or as a result of any increase to Ayrpak's insurance charges) will be charged for on the basis of Ayrpak's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Ayrpak within ten (10) working days. Failure to do so will entitle Ayrpak to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.

7.3 At Ayrpak's sole discretion a non-refundable deposit may be required.

7.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Ayrpak, which may be:

- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) by way of instalments/progress payments in accordance with Ayrpak's payment schedule;
- (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;

(e) the date specified on any invoice or other form as being the date for payment; or

- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Ayrpak.

7.5 Invoices and statements will be emailed to the Customer as standard practice and where the Customer requests invoices or statements to be mailed, then an administration fee shall be charged per mailing.

7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card being MasterCard or Visa (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Ayrpak.

7.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Ayrpak nor to withhold payment of any invoice because part of that invoice is in dispute.

7.8 Unless otherwise stated the Price does not include GST. In addition to the Prices, the Customer must pay to Ayrpak an amount equal to any GST Ayrpak must pay for any supply by Ayrpak under this or any other agreement for the sale of Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Delivery of Goods

8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that;

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Ayrpak's address; or
- (b) Ayrpak (or Ayrpak's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

8.2 At Ayrpak's sole discretion, an administration fee may apply and/or the cost of delivery is in addition to the Price. Ayrpak may deliver the Goods in separate instalments.

8.3 Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.4 Any time specified by Ayrpak for delivery of the Goods is in an estimate only and Ayrpak will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Ayrpak is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Ayrpak shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk

9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Ayrpak is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Ayrpak is sufficient evidence of Ayrpak's rights to receive the insurance proceeds without the need for any person dealing with Ayrpak to make further enquiries.

9.3 If the Customer requests Ayrpak to leave Goods outside Ayrpaks premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

10. Specification

10.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Ayrpak's or manufacturers fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Ayrpak.

10.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

11. Title

11.1 Ayrpak and the Customer agree that ownership of the Goods shall not pass until;

- (a) the Customer has paid Ayrpak all amounts owing to Ayrpak; and
- (b) the Customer has met all of its other obligations to Ayrpak.

11.2 Receipt by Ayrpak of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 11.1;

(a) the Customer is only a bailee of the Goods and must return the Goods to Ayrpak on request.

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Ayrpak and must pay to Ayrpak the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Ayrpak and must pay or deliver the proceeds to Ayrpak on demand.

(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Ayrpak and must sell, dispose of or return the resulting product to Ayrpak as it so directs.

(e) the Customer irrevocably authorises Ayrpak to enter any premises where Ayrpak believes the Goods are kept and recover possession of the Goods.

(f) Ayrpak may recover possession of any Goods in transit whether or not delivery as occurred.

(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant not otherwise give away any interest in the Goods while they remain the property of Ayrpak.

(h) Ayrpak may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 1999 (“PPSA”)

12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that;
(a) these terms and conditions constitutes a security agreement for the purposes of the PPSA; and
(b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Ayrpak for Services – that have previously been supplied and that will be supplied in the future by Ayrpak to the Customer.

12.2 The Customer undertakes to;

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Ayrpak may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

(b) indemnify, and upon demand reimburse, Ayrpak for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;

(c) not register, or permit to be registered,, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Ayrpak; and

(d) immediately advise Ayrpak of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sale.

12.3 Ayrpak and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

12.4 The customer waives its rights as a debtor under sections 116, 120(2) 121, 125,126,127,129,131 and 132 of the PPSA.

12.5 Unless otherwise agreed to in writing by Ayrpak, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12.6 The Customer shall unconditionally ratify any actions taken by Ayrpak under clauses 12.1 to 12.5.

13. Security and Charge

13.1 In consideration of Ayrpak agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Customer indemnifies Ayrpak from and against all Ayrpak’s costs and disbursements including legal costs or a solicitor and own client basis incurred in exercising Ayrpak’s rights under this clause.

1.3 The Customer irrevocably appoints Ayrpak and each director of Ayrpak as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to signing any document on the Customer’s behalf.

14. Customer’s Disclaimer

14.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Ayrpak or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Ayrpak and the Customer acknowledges that the Goods are bought relying solely upon the Customer’s skill and judgment.

15. Defects

15.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Ayrpak of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Ayrpak an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defect Goods, which Ayrpak has agreed in writing that the Customer is entitled to reject, Ayrpak’s liability is limited to either (at Ayrpak’s discretion) replacing the Goods or repairing the Goods.

15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that;

(a) Ayrpak has agreed in writing to accept the return of the Goods; and

(b) the Goods are returned at the Customer’s cost within seven (7) days of the delivery date; and

(c) Ayrpak will not be liable for the Goods which have not been stored or used in a proper manner; and
(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

15.3 Ayrpak may (in its discretion) accept the return of Goods for credit buy this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.

16. Warranty

16.1 For Goods not manufactured by Ayrpak, the warranty shall be the current warranty provided by the manufacturer of the Goods. Ayrpak shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

17. Consumer Guarantees Act 1993

17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Ayrpak to the Customer.

18. Intellectual Property

18.1 Where Ayrpak has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Ayrpak. Under no circumstances may such designs, drawings and documents be used without the express written approval of Ayrpak.

18.2 The Customer warrants that all designs, specifications or instructions given to Ayrpak will not cause Ayrpak to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Ayrpak against any action taken by a third party against Ayrpak in respect of any such infringement.

18.3 The Customer agrees that Ayrpak may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Ayrpak has created for the customer.

19 Default and Consequences of Default

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and half percent (2.5%) per calendar month (and at Ayrpak's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.

19.2 if the Customer owes Ayrpak any money the customer shall indemnify Ayrpak from and against all costs and disbursements incurred by Ayrpak in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ayrpak collection agency costs, and bank dishonour fees.

19.3 Further to any other rights or remedies Ayrpak may have under this contract, if a Customer has made payment to Ayrpak and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Ayrpak under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

19.4 Without prejudice to aypaks other remedies at law Ayrpak shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Ayrpak shall, whether or not due for payment become immediately payable if;

(a) any money payable to Ayrpak becomes overdue, or in Ayrpak's opinion the Customer will be unable to make a payment when it fall due.

(b) the Customer has exceeded any applicable credit limited provided by Ayrpak;

(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditor, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Cancellation

20.1 Without prejudice to any other remedies Ayrpak may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Ayrpak may suspend or terminate the supply of Goods to the Customer. Ayrpak will not be liable to the Customer for any loss or damage the Customer suffers because Ayrpak has exercised its right under this clause.

20.2 Ayrpak may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Ayrpak shall repay to the Customer any money paid by the Customer for the Goods. Ayrpak shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Ayrpak as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1993

21.1 The Customer authorises Ayrpak or Ayrpak's agent to:

(a) access, collect, retain and use any information about the Customer.

(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; Or

(ii) for the purpose of marketing products and services to the Customer.

(b) disclose information about the Customer, whether collected by Ayrpak from the Customer directly or obtained by Ayrpak from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.

21.3 The Customer shall have the right to request Ayrpak for a copy of the information about the Customer retained by Ayrpak and the right to request Ayrpak to correct any incorrect information about the Customer held by Ayrpak.

22. Service of Notices

22.1 Any written notice given under this contract shall be deemed to have been given and received;

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this contract,

(c) by sending it by registered post to the address of the other party as stated in this contract,

(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

22.1 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when the ordinary course of post, the notice would have been delivered.

23. General

23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Wellington, New Zealand.

23.3 Ayrpak shall be under no liability whatsoever to the Customer for any indirect and /or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Ayrpak of these terms and conditions (alternatively Ayrpak's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

23.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

23.5 The Customer agrees that Ayrpak may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Ayrpak to provide Goods for the Customer.

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23.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.