



TRADING AS



## TERMS OF TRADE

### 1. Acceptance

- (a) These terms and conditions ("Terms") govern the purchase of any Goods you ("the Buyer" or "you") make from Punchbowl Packaging Limited ("Punchbowl") from time to time. By placing an order for Goods you are deemed to have read and accept these Terms and agree to be bound by them. These Terms apply in preference to any terms supplied by you.
- (b) Punchbowl reserves the right to amend these Terms from time to time, including by way of replacing these Terms in their entirety with new terms. Amendments will be effective immediately upon being placed on Punchbowl's website at [www.punchbowlpackaging.co.nz](http://www.punchbowlpackaging.co.nz) ("Website"). Placing an order for Goods following such amendments being placed on the Website will represent an agreement by you to be bound by the Terms as amended.

### 2. Contract, Ordering, Delivery and Price

- (a) These Terms shall be included in every contract between Punchbowl and the Buyer relating to Goods sold to the Buyer.
- (b) Orders may be placed with Punchbowl:
  - (i) By telephone; or
  - (ii) By Fax;
  - (iii) By email; or
  - (iv) Via the Website.
- (c) All orders must specify:
  - (i) Your name;
  - (ii) Your delivery address;
  - (iii) Your contact phone number and email address;
  - (iv) The required type, size and quantity of Goods.
- (d) Punchbowl shall confirm your order either verbally or in writing. No order is binding upon Punchbowl until its acceptance has been confirmed.
- (e) The Buyer may not cancel an order once it has been confirmed by Punchbowl.
- (f) A target delivery date will be agreed at the time an order is confirmed. Punchbowl will use all reasonable endeavours to deliver the Goods to the address notified at the time of order in accordance with the agreed target delivery date but shall not be liable for any delay in delivery.
- (g) The Buyer is responsible for examining the Goods upon delivery and must notify Punchbowl of any defects, whether as to quantity or quality within 7 days of delivery.
- (h) Prices for the Goods are as set out in the most recent price list for the Goods provided by Punchbowl and available upon request. All prices are expressed in New Zealand dollars and are exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985, as well as any other applicable sales tax or duty ("GST"). GST will be added to the Price and is payable by the Buyer in accordance with the payment provisions set out in these Terms.
- (i) Prices also exclude freight charges. Freight charges are additional and are payable by the Buyer in accordance with the payment provisions set out in these Terms.

### 3. Payment

- (a) Unless otherwise agreed in writing, the terms of payment are:
  - (i) Where Punchbowl has agreed to extend the Buyer credit terms, payment is to be made in full, without setoff or deduction of any kind, on or before the 20<sup>th</sup> day of the month following the date of invoice.
  - (ii) Where Punchbowl has not agreed to extend the Buyer credit terms, payment is to be made in cleared funds, without setoff or deduction of any kind, on or prior to delivery.
  - (iii) Punchbowl reserves the right to treat each separate delivery as a separate contract for the purposes of payment.

- (b) Payment is to be made in cash, by electronic bank transfer into the bank account noted on the invoice, or such other method as agreed between Punchbowl and the Buyer.
- (c) Any dispute in relation to the price payable must be notified to Punchbowl prior to the due date for payment and the parties will endeavour to resolve the dispute in good faith.
- (d) If the Buyer fails to make any payment due to Punchbowl by the due date for payment it is liable to pay Punchbowl interest on the amount in default at the rate of 15% per annum for the period from the due date for payment until payment in full is received by Punchbowl, with such interest to accrue on a daily basis. The Buyer is also liable to pay all expenses and legal costs of Punchbowl (calculated as between solicitor and client) in relation to the failure to comply. This provision is not a waiver of the Buyer's default and the interest rate is not an extension of credit to the Buyer but is a genuine pre-estimate of Punchbowl's loss caused by the Buyer's failure to pay on due date.
- (e) In addition to the right to charge interest, where there is any default in payment Punchbowl reserves the right to decline supply of any future orders.
- (f) Where a default in payment exceeds 2 months Punchbowl is entitled to repossess the Goods.

#### 4. Risk

- (a) The risk of any loss or damage to or deterioration of the Goods supplied by Punchbowl to the Buyer shall pass and be borne by the Buyer upon delivery of the Goods to the Buyer's delivery address.

#### 5. Ownership of the Goods

- (a) Notwithstanding clause 4, ownership in any Goods delivered by Punchbowl to the Buyer does not pass (and the Buyer is a bailee only in respect of such Goods) until payment in full has been received by Punchbowl.
- (b) After delivery, but while ownership remains with Punchbowl, the Buyer must ensure:
  - (i) The Goods are clearly identified as belonging to Punchbowl;
  - (ii) Any proceeds from a subsequent sale are held in trust for the benefit of Punchbowl;
  - (iii) No interest or charge over the Goods is granted to a third party;
  - (iv) That the Goods are insured against all risks, at the Buyer's cost, naming Punchbowl as loss payee, for the Goods' full replacement value.
- (c) You acknowledge that until such time as payment in full has been received by Punchbowl, Punchbowl has a Security Interest in the Goods (as that term is defined in the Personal Property Securities Act 1999 (PPSA)) and that these Terms constitute a Security Agreement for the purpose of the PPSA in respect of the Goods supplied to the Buyer and their proceeds for the purpose of securing payment of all amounts owed by the Buyer to Punchbowl from time to time, and at any time. You agree that you will, when requested by Punchbowl, promptly execute any documents and do anything else required by Punchbowl to ensure the Security Interest created under these Terms constitutes a first ranking Security Interest over the relevant Goods and their proceeds, including any information Punchbowl reasonably requires to complete a Financing Statement or Financing Change Statement.
- (d) The Buyer agrees that nothing in sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall apply to these terms, or the security under these terms.
- (e) The Buyer waives its rights under the PPSA to receive a copy of any verification statement or financing change statement.

#### 6. Liability and Warranty

- (a) The Goods are subject to standard tolerances of the industry.
- (b) The Goods are supplied on the basis that all conditions, guarantees, warranties and representations which are or might be implied by law, trade, custom or otherwise, that are capable of being legally excluded, being expressly excluded.
- (c) The Buyer agrees that the Buyer is acquiring the goods from Punchbowl for business purposes and accordingly the guarantees and rights expressed or implied in the Consumer Guarantees 1993 Act in favour of the Buyer do not apply.
- (d) Under no circumstances will Punchbowl, its employees or agents be liable to you in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Buyer or by any other third party, whether direct or consequential which relates to the purchase and/or use of the Goods.
- (e) To the extent Punchbowl is found liable for any reason for any loss, damages or costs suffered or incurred by the Buyer arising from any breach of these Terms or for any other reason, to the maximum extent permitted by law any such liability of Punchbowl to the Buyer is limited to the lesser of:
  - (i) The price paid for the relevant Goods to which the liability relates; and
  - (ii) The actual loss, damage or cost suffered by the Buyer.
- (f) The Buyer agrees to assume all responsibility for any third party claims that may arise in connection with the use of the Goods where the Buyer has a relationship with that third party and has supplied the Goods to that third party for use, for example, where the Buyer uses the Goods to pack a third party's kiwifruit pursuant to a packing agreement between the Buyer and the third party.

#### 7. Setoff

- (a) Punchbowl shall have the right without prior notice to the Buyer to setoff in discharge or reduction of any debt payable to it by the Buyer, any monies payable on whatever account by Punchbowl to the Buyer, including monies payable to the Buyer by Punchbowl as agent for a third party.

#### 8. Use of goods

- (a) The Buyer will use the Goods for either the purpose specified by Punchbowl or in accordance with the provisions of any agreement or contract the Buyer has with Punchbowl. The Buyer shall not use the Goods in any manner which breaches the intellectual property rights attaching to the Goods.

9. **Force Majeure**
- (a) Punchbowl does not breach these Terms if its breach is caused by any matter beyond the reasonable control of Punchbowl, not including financial difficulty (“force majeure”).
  - (b) Where Punchbowl is unable, wholly or in part, by reason of a force majeure event to carry out any obligation under these Terms and:
    - (i) Gives the Buyer immediate notice of the force majeure event;
    - (ii) Uses all reasonable diligence to remove the force majeure event as quickly as possible; that obligation is suspended so far as it is affected by the force majeure event during its continuance.
10. **Intellectual Property**
- (a) The Buyer acknowledges that all intellectual property in the Goods belong to Punchbowl, or Punchbowl is otherwise entitled to such intellectual property rights under licence.
11. **General**
- (a) If any of these Terms are held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining Terms shall continue in force.
  - (b) If Punchbowl delays or does not exercise any of its rights or remedies under these Terms that will not be a waiver of the right or remedy.
  - (c) Any notice may be given in person, posted or sent by fax or email. Where a notice is given in person delivery occurs at the time of physical delivery; where a notice is sent by fax or email, delivery occurs at the time of transmission without any notification of error or failed delivery.
  - (d) The Buyer may not assign or subcontract its rights or obligations under these Terms without the prior written consent of Punchbowl.
12. **Governing Law**
- (a) These Terms are governed by, and are to be construed in accordance with the laws of New Zealand and the Buyer agrees to submit to the non exclusive jurisdiction of the Courts of New Zealand.
13. **Interpretation**
- (a) In these Terms:
    - “Punchbowl” means Punchbowl Packaging Limited together with its successors and assigns.
    - “The Buyer” means the person, firm or company buying Goods from Punchbowl together with that person, firm or company’s executors, administrators, successors and permitted assigns.
    - “Goods” means all packaging, products or goods of whatever kind being purchased by the Buyer from Punchbowl.
  - (b) Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.
  - (c) Words referring to the singular include the plural and vice versa.
  - (d) A reference to a person includes any other entity or association recognised by law.
  - (e) A reference to “\$” and “dollars” are references to New Zealand currency unless otherwise stated.
  - (f) Everything expressed or implied in these terms which involves more than one person binds and benefits those people jointly and severally.
  - (g) The provisions of these Terms shall be given a fair large and liberal interpretation so that the contra proferentum rule shall not in any case apply against or to the disadvantage of Punchbowl.

**I/we warrant that I/we am/are authorised to sign these Terms of Trade on behalf of the Buyer and that the Buyer will be legally bound as a result.**

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_