

Terms and Conditions

- 1 Any specification/quote made by Ozpak Pty Ltd. A.B.N. 57 091 370 446 (“Ozpak”) to any person (“Customer”) does not constitute an offer to supply any services or products to the Customer or any other person and no contract will exist between Ozpak and the Customer unless and until the Customer accepts the specification/quotation by signing and returning it to Ozpak. Upon the Customer signing and returning the specification/quote, a contract (“Contract”) will be created for the supply of services and products by Ozpak to the Customer as specified in the job specification/quotation and Ozpak accepts that order (in full or in part) either by so notifying the Customer, or by executing the order upon the following terms and conditions. If the Customer is a company, the signatory on the specification/quote is deemed to have authority to sign the same, and personally guarantees payment under Clause 2 below.
- 2
 - (a) Payment shall be made by cash or cleared funds, without deductions within 30 days of the last day of the month in which Ozpak’s invoice is issued. Time for payment of Ozpak’s invoice is of the essence.
 - (b) Unless Ozpak otherwise agrees in writing, the Customer is not to deduct from an invoice amount any set off, counterclaim or rebates claimed by the Customer or other sum (including taxes and charges).
 - (c) Ozpak may require payment by electronic transfer in clear funds to a bank account nominated by Ozpak in writing. If payment is made by cheque, payment is not made until the cheque clears.
- 3 If the Customer fails to pay any amount payable to Ozpak (including interest under this clause), as outlined in Clause 2 above, then it must pay interest to Ozpak on the unpaid amount on demand from time to time.
 - (a) Interest under this clause will accrue on the daily balance of the unpaid amount from the date on which it fell due until the date on which it is paid, calculated on a daily basis at a rate equal to fifteen percent (per annum).
 - (b) Without liability to the Customer, Ozpak may cancel or suspend delivery of other products or services yet to be supplied under any contract with the Customer.
 - (c) Ozpak may exercise any other rights it has in relation to the default.
- 4 All prices and other items quoted or estimated in a specification/quotation from Ozpak remain firm for 30 days only from the date of the specification/quotation unless otherwise stated and thereafter may be altered or withdrawn by Ozpak without notice to the Customer for any reason whatsoever including, but not limited to any increase in Ozpak’s costs between the date of the specification/quotation and the date of supply of the services.
- 5 Ozpak will warehouse finished goods for five (5) working days after production for Quality Assurance. All goods including packaged goods and wines stored longer than this time will attract a warehouse charge, invoiced monthly at the standard rate applicable at that time. Warehouse space is available subject to Ozpak’s own requirements.
- 6
 - (a) All packaging materials and products to be packaged must be at the bottling hall at least three (3) working days prior to production unless specifically agreed otherwise.
 - (b) The Customer is responsible for ensuring all materials delivered directly or indirectly on its behalf, are suitable in all respects for proposed usage by Ozpak. Ozpak will take all

reasonable precautions to ensure any defective materials are not used, but will not take responsibility should any defects be subsequently discovered.

- (c) Where rework or extra work due to faulty Customer supplied materials is required, costs including overhead expenses incurred by Ozpak will be applied as a separate charge.
 - (d) Where Customer supplied materials are not delivered in time to meet a scheduled production, which results in Ozpak incurring downtime, Ozpak reserves the right to recover all costs incurred for this downtime.
 - (e) Labels should be cured for a minimum of five (5) days after printing and prior to production commencement. Labels used prior to this curing period will be applied at the Customer's risk and any downtime or lost production time may be charged.
- 7
- (a) Unless prearranged, wines delivered to Ozpak must be in a condition suitable for efficient bottling. Wines in a condition not suitable for efficient bottling (dependent upon final filtration required for bottling) will be advised to the Customer. The cost of any further pre-filtration will be borne by the Customer.
 - (b) Ozpak will filter wines during production in accordance with Customer's requirements. However, microbiological stability cannot be guaranteed on wines that are not membrane filtered on-line or have the potential for bacteriological instability, i.e. high malic acid level.
- 8
- (a) The Customer (or their agent), will be responsible for the written approval of their product prior to the scheduled commencement of production
 - (b) The Customer (or their agent), must authorise and return an Ozpak Packaging Specification Sheet three (3) weeks prior to scheduled commencement of packing to facilitate orderly operations.
- 9
- Specifications/quotations are supplied on the basis that credit references satisfactory to Ozpak shall be provided.
- 10
- (a) Each Customer must supply an A.B.N. number (or in the case of McPherson supplied wines, a W.E.T. Exception declaration) with each production. If they are not supplied, Ozpak reserves the right to charge the appropriate Taxes as required by the A.T.O.
 - (b) The Customer shall be liable for all State or Federal Government levies or taxes applicable as at the date of signing of the agreement, as well as any new levies or taxes (such as the carbon tax) introduced during the term of the contract including increase in G.S.T. and W.E.T. taxes.
- 11
- The Customer is responsible for supply of suitable pallets at least five (5) working days prior to production unless otherwise agreed. Where Ozpak supplies any pallets, bins or cella stacs used to transport goods (includes wine)to the Customer:
- (a) If Ozpak knows the Customer account number with CHEP or Loscam, Ozpak will debit that account with those items
 - (b) Otherwise, within 30 days after delivery the Customer must return these items to Ozpak, or to Ozpak's nominated destination in no worse condition, or the Customer is to pay Ozpak the cost of replacing those items
- 12
- (a) Risk in all items (including wines, bottles and packaging material) to be delivered to Ozpak pursuant to this Contract only passes to Ozpak once these items have been unloaded and landed at Ozpak's warehouse with Ozpak's consent and risk in all items to be transported to the Customer or at the Customer's request shall be the Customer's once any such items have been loaded at Ozpak's warehouse.
 - (b) Notwithstanding clause 12 (a) above, Ozpak shall not be liable for any loss or damage

(including loss of profit) arising as a result of the loss or destruction of or damage to any items (including wines, bottles and packaging material) delivered to Ozpak except to the extent such loss or damage is caused by the negligence of Ozpak.

- (c) The Customer represents and warrants to Ozpak that the following insurance cover with a reputable and solvent insurer is in place at the date of the Contract, and will be maintained throughout the term thereof at the cost of the Customer:
 - (i) In transit insurance to insure all wines, bottles, packaging materials and other items delivered to Ozpak's warehouse by or on behalf of the Customer and products to be transported from Ozpak's warehouse.
 - (ii) General property insurance covering all the said wines, packaging materials and other items for full replacement value against all loss or damage, including fire, theft and spoilage while located at Ozpak's warehouse.
 - (iii) Product liability insurance insuring the Customer and Ozpak against any future product liability claim in respect of the products.
 - (d) The Customer hereby indemnifies and agrees to keep indemnified Ozpak against any liability, loss, damage, expense or cost incurred or suffered as a result of the consumption or attempted consumption by any person of any defective or contaminated products.
 - (e) The Customer shall be responsible for ensuring all bottles, packaging materials and other items delivered by the Customer or on the Customer's behalf to Ozpak are of a merchantable quality, fit to be used by Ozpak in supplying the services and free from any defects whatsoever.
 - (f) The Customer hereby indemnifies and agrees to keep indemnified Ozpak against any liability, loss, damage, expense or cost incurred or suffered as a result of any bottles, packaging materials and other items delivered by the Customer or on the Customer's behalf to Ozpak and used by Ozpak in supplying the services which are not of a merchantable quality nor which are fit to be used by Ozpak in supplying the services or which are defective, including any costs and overhead expenses incurred in respect thereof by Ozpak.
 - (g) Any claims for defective workmanship or defects as a result of Ozpak supplied materials are limited to the value of the Contract.
 - (h) Due to the nature of re-washed glass, Ozpak cannot accept responsibility for either the microbiological stability of the packaged wine or the packaging appearance (that pertains directly to any fault(s) in the re-washed glass).
- 13 Unless otherwise stated, the prices quoted for the work is based on it being carried out at normal hourly wage rates. If, due to the Customer's requirements, the work is to be carried out at penalty rates, then incremental costs will be passed on.
- 14 Where proprietary materials are purchased and/or stored in good faith which are not used, then Ozpak reserves the right to invoice the cost of the goods, and to apply storage charges which will be due for payment within seven (7) days from date of invoice.
- 15 Ozpak shall have a general lien on all wines, dry goods, finished goods (whether packaged or not) and any other goods of the Customer which are in the possession of Ozpak for all sums payable by the Customer to Ozpak and for that purpose shall have the right to sell any such goods (including wines, dry goods or finished goods) by public auction or private treaty and out of monies arising from the sale, may retain the sum so payable and all charges and expenses relating to the detention and sale. Ozpak can only exercise this right under the lien in the event that i) any amounts invoiced remain unpaid and in breach of clause 2(a) of these terms and conditions; or ii) an administrator,

receiver or liquidator is appointed to manage the affairs of the customer. The rights of Ozpak under this clause shall survive the termination of the Contract between Ozpak and the Customer (as evidenced by these Terms and Conditions), whether by the effusion of time or otherwise.

- (a) At any time without prior notice to the Customer but at the Customer's cost, Ozpak may register in relation to any or all of those rights one or more financing statements/financing change statements on the register maintained under the PPSA.
 - (b) To any extent Ozpak at any time requests, within 7 days the Customer must do all things necessary to assist such registration(s) and/or ensure the above rights priority over any other security interest (present or future) over the same property.
- 16 Ozpak may set off any debt or liability the Customer (alone or with others) owes to an Ozpak associated Company against any debt or liability an Ozpak associated Company owes to the Customer on any account. If a liability is unliquidated or otherwise unascertained, Ozpak may set off an amount estimated by them on account of such liability, without prejudice to the obligation of Ozpak or an Ozpak associated Company to account for any shortfall or excess.
- 17 Title to, and property in, any goods supplied by Ozpak to the Customer remains with Ozpak and will only pass to the Customer once payment has been made in full.
- 18 Risk in any goods passes to the Customer when the relevant goods leaves Ozpak's premises for delivery to the Customer.
- 19 At all times while Ozpak retains title to the goods, the Customer holds the goods as Ozpak's fiduciary. The Customer is not authorised to sell any of the goods unless payment has been made in full to Ozpak.
- 20 At all times while Ozpak retains title to the goods:
- (a) the proceeds of any sale or resale of any of the goods or insurance claim regarding any of the goods must be held on trust for Ozpak, in a separate account; and
 - (b) the Customer must pay Ozpak for that part of the proceeds of any sale or resale of any of the goods or insurance claim regarding any of the goods that is equal to any amounts for or in connection with those goods (including any amount payable for GST and any accrued interest) owing by the Customer to Ozpak.
- 21 At all times while Ozpak retains title to the goods, the Customer must store the goods separately from any other property in the possession of the Customer and in a way that enables the goods to be easily identifiable as goods sold by Ozpak.
- 22 Despite any other rights of Ozpak, if the Customer defaults under a Contract, including failing to pay any amount due to Ozpak, then:
- (a) the Customer's right to sell the goods terminates immediately;
 - (b) the Customer grants Ozpak or a person nominated by Ozpak an irrevocable licence under which Ozpak is authorised to enter any of the Customer's premises in which the goods are stored or in which Ozpak reasonably considers the goods may be stored, to enable Ozpak to claim and retake possession of the goods; and
 - (c) Ozpak is entitled to claim and retake possession of, and to sell, the goods in satisfaction in whole or in part of all money owing by the Customer to Ozpak.

- 23 If any of the goods is installed in, or affixed to, or become an accession to any other products, the security interest continues in the accession in accordance with the PPSA.
- 24 The Customer acknowledges that a Contract creates a registrable security interest under the PPSA in the goods and the proceeds of the goods and the security interest created by a Contract attaches to the goods and the proceeds of the goods in accordance with the PPSA.
- 25 The Customer:
- (a) at Ozpak's request, must promptly execute any documents and do anything required (including to register any security interest on the PPS Register) to ensure that any security interest created under a Contract is perfected and remains continuously perfected, Ozpak's priority position is preserved or secured and any defect in the security interest, including its registration, is overcome;
 - (b) must indemnify, and on demand reimburse, Ozpak for all expenses incurred in registering a financing statement or financing change statement on the PPS Register, and for the enforcement of any rights arising out of Ozpak's security interest;
 - (c) must not change its name, address or contact details without providing prior written notice to Ozpak;
 - (d) if it is a trust and does not have an ABN allocated to it as at the date of this agreement, must not register an ABN without providing prior written notice to Ozpak;
 - (e) must not register a financing change statement or a change demand without Ozpak's prior written consent;
 - (f) except as specifically permitted under a Contract, must not without Ozpak's prior written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the goods or any interest in the goods (or purport or attempt to purport to do any of those things) or permit any lien over the goods; and
 - (g) must not remove, or permit to be removed, any of the goods to any place outside Australia without Ozpak's prior written consent.
- 26 To the extent that the PPSA permits, the Customer waives its rights:
- (a) to receive a copy of any verification statement or financing change statement or a statement of account on the sale of the goods;
 - (b) to reinstate the security agreement by payment of any amounts owing or by remedy of any default where Ozpak has the right to dispose of or retain the goods;
 - (c) where any goods become an accession, to prevent Ozpak removing the goods even if the removal will cause damage to the Customer's property, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession under the PPSA; and
 - (d) under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 27 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Ozpak has given its prior written consent.

- 28 Words and expressions used in clauses 17 to 27 which are not defined in these terms and conditions but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- 29 Neither party may disclose the provisions of this Contract including, without limiting the generality thereof, the prices payable for the services, to any person other than that party's legal advisers or as required by law.
- 30 The rights and obligations of the parties under this Contract are personal to the parties and may not be assigned or novated without the prior consent in writing of both parties.
- 31 This Contract shall be governed by and interpreted in accordance with the laws in force in the State of Victoria and the parties agree to submit to the exclusive jurisdiction of the courts in that State.
- 32 If by reason of any fact, circumstance, matter or thing beyond the control of Ozpak it is unable to perform in whole or in part any obligation under this Contract, Ozpak shall be relieved of that obligation under the Contract to the extent and for the period that is so unable to perform and shall not be liable to the Customer in respect of such inability.
- 33 No employee, agent or representative of Ozpak other than its directors, operations manager, bottling winemaker or plant manager has any authority to vary these terms and conditions without limiting the generality of the foregoing no warranty, representation, promise, agreement, terms or conditions whether express or implied made by any such person shall be deemed to be included in or form part of these terms and conditions or operate in any way collateral to these terms and conditions other than those warranties, representations, promises, agreements, terms or conditions which expressly appear herein.
- 34 The provisions contained in these terms and conditions replace all terms and conditions of any previous contract between the parties.
- 35 If Customer is declared bankrupt or fails to make payment for goods when due or fails to comply with any of the terms of the contract resulting from acceptance of the order or being a company goes into liquidation, administration or under receivership Ozpak shall have the right to terminate this contract by notice in writing to the Customer. Termination pursuant to this clause shall not affect any rights of Ozpak acquired prior to such termination.
- 36 The Customer by signing Ozpak's credit application form hereby acknowledges and permits Ozpak to contact bank or credit references given therein.
- 37 The Customer shall submit all claims in writing to Ozpak within (7) seven days from the date of receipt of Goods or Services supplied by Ozpak (giving reasonable details), failing which the Customer waives all rights to dispute that invoice.
- 38 The Customer agrees to pay all taxes/excise on goods ordered, including but not limited to wet tax, sales tax, goods and services tax (if applicable) as levied by The State and Commonwealth Authorities.

If any provision of these terms and conditions is invalid, void or unenforceable, all other provisions, which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.

The Customer's failure to acknowledge these terms is not evidence these terms do not apply. The Customer placing an order on a Customer code allocated by Ozpak is acceptance of these terms. Before Ozpak accepts an order, Ozpak may vary these terms at its discretion at any time.