



## **ASTRAPAK MANUFACTURING HOLDINGS (PROPRIETARY) LIMITED AND MARCOM (PROPRIETARY) LIMITED ("The Supplier")**

### **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS**

The Company's quotation or tender for the sale of Goods and any contract resulting therefrom shall be subject to the following terms and conditions which shall apply to the exclusion of all other terms and conditions whether express or implied, unless the Company specifically agrees in writing to accept any variation hereto.

The Customer, by accepting delivery of any Goods or the rendition hereto, acknowledges that no terms and conditions which the Customer purports to attach to its acceptance, nor any terms and conditions which might have been attached to the Customer's order, shall be binding on the Company the Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

#### **SECTION A:**

##### **1. DEFINITIONS**

- 1.1. "**Agreement**" means the **Application** including the terms and conditions and any additions or Amendments to this **Agreement**.
- 1.2. "**Application**" means the **Application** by the **Customer** to purchase **Goods** on credit or on non-credit terms from the **Company** and that is attached to these terms and conditions;
- 1.3. "**Company**" means Astrapak Manufacturing Holdings (Proprietary) Limited, Registration Number: 2009/008434/07
- 1.4. "**Consumer**" means a consumer as defined in the **CPA**;
- 1.5. "**CPA**" means the Consumer Protection Act 68 of 2008 and any promulgated regulations thereto and as amended from time to time;
- 1.6. "**Customer**" means any person, including a Consumer with whom the **Company** concludes an **Agreement** for the sale of any **Goods**;
- 1.7. "**Goods**" means any tangible object supplied by the **Company** to the **Customer** in terms of this **Agreement**;
- 1.8. "**Price**" means the **Price** agreed between the **Company** and the **Customer** for the **Goods** , together with value added tax thereon;

##### **2. COMMENCEMENT AND DURATION OF THIS AGREEMENT**

- 2.1. By placing an order with the Company or making an Application, the Customer agrees to enter into an Agreement with the Company for the supply of Goods. If so, this Agreement will begin and be binding on the Customer when the Company accepts the order or the Application as the case may be and supplies the Goods to the Customer.
- 2.2. This Agreement shall, subject to the provisions of clauses 8 and 26, continue for an indefinite period.

##### **3. PAYMENT TERMS**

- 3.1. In return for the supply of the Goods the Customer agrees to pay the Company the price as set out in more detail in the quotation.
- 3.2. In the event that the Company has granted the Customer credit facilities in writing, the Price shall be paid by the Customer, without deduction or set-off of any claims of the Customer against the Company, within 30 (thirty) days from the date of the Company's statement of account.
- 3.3. However, if day 30 falls on Saturday, Sunday or public holiday, payment must be made on or before the preceding business day. In the event of non-credit sales or cash sales the Price shall be paid by the Customer by way of electronic bank transfer or cash deposit into the bank account of the Company or, at the sole discretion of the Company without deduction or set-off, prior to dispatch or collection of the Goods. The Customer must provide the Company with proof of payment before deliveries or collections of the Goods will be allowed. Where payment is made by means of electronic funds transfer, a cheque or any other negotiable instrument, the delivery of the goods shall only be made or collections of the Goods will only be allowed once the funds have been cleared by the Company's bank.
- 3.4. The Company reserves the right to withdraw or amend any credit facilities at any time which may have been granted to



the Customer and to require the Customer to furnish guarantees and/or suretyships that are acceptable to the Company for its current or future obligations. The Company may charge the Customer interest on any overdue amount at the prime overdraft rate plus 2% of Nedbank Limited, calculated from the due date. A certificate signed by any manager of the aforesaid bank (whose authority and appointment it shall not be necessary to prove) as to the prime overdraft rate prevailing from time to time shall constitute prima facie proof (sufficient evidence) of that rate.

- 3.5. Should the Customer fail to clearly indicate to the Company which items appearing on the Company's statement it is paying, the Company reserves the right to apply such payment by the Customer to those items in respect of which payment has been overdue for the longest time.
- 3.6. Payment must be made for the total amount that the Customer owes the Company as set out on the invoice(s) issued to the Customer.
- 3.7. Should any amount not be received by the Company on or before due date, all other amounts payable and due by the Customer to the Company, shall immediately (and without notice to the Customer) become both due and payable.
- 3.8. The Customer shall not be entitled to withhold or set-off payment for any reason whatsoever notwithstanding that any dispute may be pending between the parties nor shall the Customer be entitled to make any deduction from the Price or to set off any alleged claim against the amounts due by the Customer to the Company.
- 3.9. The Customer shall be liable to pay the Company the full amount of the order in advance if the Company has not completed its credit risk assessment of the Customer and the Customer requires urgent or immediate delivery of the Goods.
- 3.10. In addition to the rights of the Company above, if the Customer:
  - 3.10.1. does not pay the Company on time;
  - 3.10.2. commits a material breach of this Agreement;
  - 3.10.3. does not pay the required full amount in advance;then the Company may suspend any supply of Goods until the Customer has paid or remedied the breach to the satisfaction of the Company.

#### **4. QUOTATIONS**

- 4.1. Any quotation by the Company is open for acceptance for a period of 30 days from the date appearing on the quotation, unless revoked earlier in terms of written notice to the Customer or otherwise agreed to in writing between the Company and the Customer or the quotation provided specifies a different period than 30 days.
- 4.2. The Price quoted for the Company's Goods will, upon acceptance by the Customer, whether such acceptance is tacit or written, constitute the Price.
- 4.3. The Price quoted by the Company is based on the product specifications as provided by the Customer.
- 4.4. The Company reserves the right to amend the Price quoted should the product specification is different from the initial product specification provided by the Customer.

#### **5. CERTIFICATE**

The Customer acknowledges that a certificate signed by any senior manager of the Company whose authority and appointment shall not be necessary to prove shall be prima facie proof (Sufficient evidence) of the amount of such indebtedness to the Company. Such certificate shall be sufficient proof of the Customer's indebtedness for the purposes of provisional Sentence and/or summary judgment proceedings against the Customer, or for any other Purpose whatsoever.

#### **6. FINANCIAL CENTRE INTELLIGENCE ACT**

- 6.1. The Customer acknowledges that in terms of Section 29 (1) of the Financial Centre Intelligence Act, No 38 of 2001 ("FICA") businesses are required to report any suspicious or unusual transaction or series of transactions to the Financial Intelligence Centre and in particular where the Company has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Customer's indebtedness to the Company.
- 6.2. The Customer indemnifies or holds the Company harmless against any claim of whatsoever nature instituted against the Company for any damage or harm suffered by the Customer or a Third party arising from any action taken by the Company in discharging its obligations in terms Of FICA.

#### **7. CUSTOMER'S ORDERS**

- 7.1. The Customer accepts responsibility for the safekeeping and issue of its orders and agrees to pay for orders issued on its behalf and given effect to in good faith by the Company.
- 7.2. Goods which are manufactured to order for the Customer must be called off within 60 days. The Company reserves the right, in its absolute discretion, to invoice and deliver to the Customer any Goods which were manufactured to order and remain in its possession after this period.



## **8. BREACH AND CANCELLATION OF THE AGREEMENT**

- 8.1. If the Customer does not pay any and/or all amounts due to the Company on or before the due date for payment, then, subject to the provisions of clause 8.2, the Company Reserves the right to, at its sole discretion:
  - 8.1.1. Charge interest on the overdue amount at the interest rate referred to in clause 3.4 calculated from the due date of payment to the date that the actual payment is credited;
  - 8.1.2. Take action in terms of clause 8.2 of this Agreement;
  - 8.1.3. Inform any reputable credit bureau (s) of payment default; and
  - 8.1.4. Suspend the supply of the Goods.
- 8.2. If the Customer commits a breach or if there is a failure by the Customer to comply with any of the terms and conditions of this Agreement and the Customer remains in breach for a Period of 7 (seven) working days in the case of a Customer who is not a Consumer and 20 (Twenty) working days in the case of a Customer who is a Consumer, after delivery of a written notice to the Customer by the Company requesting the Customer to remedy the Breach:
  - 8.2.1. The Company will be entitled to immediately cancel this Agreement;
  - 8.2.2. The Company will be entitled to immediately charge the Customer for the use of the Goods up to the date of cancellation;
  - 8.2.3. The full outstanding amount shall immediately become due and payable; and
  - 8.2.4. The Company will be entitled to take any and all necessary steps to recover from the Customer any amount due and payable to the Company by the Customer and the Customer shall be liable for all the costs and expenses, to the extent permitted by law, and incurred by the Company in recovering the amount due and payable, including but not limited to any collection commission, costs of an attorney and/or advocate and/or debt collector and/or tracing agent.
- 8.3. In addition to the above remedies and any other rights that the Company has in terms of law, in the event that the Customer does not remedy such breach, the Company shall be entitled to claim damages from the Customer that it may have suffered due to the Customer's breach of the terms and conditions of this Agreement.
- 8.4. Despite the provisions above, either party may cancel this Agreement immediately by giving each written notice to that effect.

## **9. USE OF CUSTOMER'S INFORMATION**

- 9.1. The Customer warrants and guarantees that all information supplied to the Company by the Customer in the Application and in terms of this Agreement is true and correct.
- 9.2. The Customer agrees to inform the Company immediately should there be any change of whatsoever nature in any of its information, including its physical address, previously supplied to the Company.
- 9.3. As and when necessary, the Customer consents to the Company obtaining and/or disclosing the Customer's information supplied to the Company as follows:
  - 9.3.1. to credit grantors and/or credit bureau and/or banks and/or other financial institutions in order to ascertain information relating to the Customer's creditworthiness (before acceptance of this Agreement) and for fraud prevention purposes in order to process any payment transactions necessary for and relative to this Agreement;
  - 9.3.2. to attorneys and/or debt collection agencies in the event that the Customer is in breach of this Agreement;
  - 9.3.3. to the Company's agents or trade partners and/or consultants but only to the extent necessary and in order to allow the supply of the Goods.
  - 9.3.4. to consumer research institutions for the purposes of conducting research on improving our Goods offered to the Customer in terms of this Agreement;
  - 9.3.5. for purposes of the Company publishing a directory containing the name, address, details and Contact numbers of its Customers.
- 9.4. The Company will not disclose the Customer's information to any other person or institution other than as stated under clause 9.3 or if the Company is compelled to do so in terms of law and/or a Court of law. The Company hereby undertakes that it will only disclose such information as is required in terms of any law and or a court of law.

## **10. JURISDICTION**

Save for any disputes to which clause 24 applies, the Customer hereby consents, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction in respect of any action instituted against the Customer by the Company for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate's Court or any other court having jurisdiction.



#### **11. FORCE MAJEURE**

Neither party shall be liable to the other for any damages or losses arising from circumstances beyond their reasonable control, which affect their ability to carry out their respective obligations in terms of this Agreement, provided that the party so affected gives reasonable notice thereof to the other.

#### **12. WHOLE AGREEMENT**

This Agreement constitutes the whole Agreement between the parties and no variation, alteration, deletion of or addition to these terms will bind the parties unless it is stipulated in writing and agreed to by both parties.

#### **13. EXTENSION OF TIME (ALSO REFERRED TO AS AN INDULGENCE)**

No leeway, extension of time or other lenience which the Company may offer to the Customer will in any way prevent the Company from enforcing any of its rights in the future, without notice, by requiring the customer's strict and timely compliance with each term and condition of this Agreement.

#### **14. NOTICES**

The parties choose their physical addresses as reflected on the Application forms as their respective domicilium citandi et executandi (physical address) for service upon it of all notices and process. The parties undertake to notify the other expeditiously of any change to its address.

#### **15. CESSION (TRANSFER) AND DELEGATION (HANDING OVER)**

15.1. The Customer shall not be entitled to transfer any of its rights to any other entity or person (this is known as ceding any of your rights) or transfer any of the Customers obligations or responsibilities to any other entity or person (this is known as delegating or handing over any of your obligations or responsibilities, in terms of this Agreement without the prior written consent of the Company.

15.2. The Company undertakes not to withhold its consent unreasonably.

#### **16. APPLICABLE LAW**

The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

#### **17. AMENDMENTS**

The Company is entitled on written notice to the Customer, to amend and/or vary the terms and conditions of this Agreement as a result of any new and/or amended law(s), tax (es) and regulation(s). If Company amends and/or vary the terms and conditions, the Company will notify the Customer at its chosen address of such amended terms and conditions.

#### **18. UNENFORCEABLE PROVISIONS**

If any of the terms and conditions of this Agreement are unenforceable, illegal, void, or contrary to Public policy then they will be considered to be legally separated from the rest of this Agreement. The rest of the provisions of this Agreement will, however, remain binding and enforceable and in full force and effect.

#### **19. AUTHORITY AND INDEMNITY**

The person signing this Agreement warrants that he or she has the necessary authority to enter into this Agreement and hereby indemnifies the Company against any liability, claim, damage or loss that a third party might have arising out of this Agreement.

### **SECTION B:**

#### **CONDITIONS APPLICABLE TO THE SALE OF GOODS**

##### **20. PRICE**

20.1. Unless otherwise agreed in writing, the Goods will be supplied at the ruling price on the date of dispatch from the factory, warehouse or branch.



- 20.2. Prices are subject to adjustment for any increases in the cost of Goods on and/or delivery that may arise between the date of quotation and the delivery of the Goods, arising directly or indirectly from any cause whatsoever, whether statutory or otherwise.

## **21. DELIVERY OF GOODS**

- 21.1. Deliveries of Goods will take place between the hours of 08h00 to 17h00 Monday to Friday, excluding public holidays. Deliveries outside normal working hours could be subject to an extra charge unless agreed to by Parties in writing.
- 21.2. The Company shall endeavour to effect delivery of the Goods on the agreed date and time to the Customer at the Customer's premises or the Customer's nominated delivery site address, provided that the Company receives a minimum of 48 hours' notice of the intended delivery date if the agreed date has changed or if no date has been previously agreed.
- 21.3. The Company shall not be responsible for delays in delivery or non-delivery of Goods whatsoever due to causes beyond the Company's control (e.g. adverse weather conditions, road congestion, labour-related actions, shortage of stock, delays on the part of subcontracted transport), Nor will the Company accept liability for damages or for any loss the Customer may suffer pursuant thereto, of whatsoever nature arising from the late delivery or non-delivery of Goods.
- 21.4. Subject to the provisions of clause 21.3 the Customer shall not be entitled to cancel or repudiate any order/s and/or purchase/s and/or refuse delivery and/or claim damages and/or set-off payment from the Company due to late and/or defective delivery. The Company's responsibility shall be to notify the Customer expeditiously of the events giving rise to the delay in delivery or non-delivery in circumstances where such delay of delivery or non-delivery is expected to extend beyond one day after the time/date of the agreed delivery schedule.
- 21.5. The provisions of clause 21.4 shall not apply to a Consumer.
- 21.6. Given the nature of Plastic Manufacturing, the customer accepts that the volume produced and delivered may vary by up to 10% from the quantity stipulated and accepted on the order for each line item. Any order against the quantity delivered falls within this 10% tolerance shall be deemed to have been fully met.
- 21.7. The Customer accepts responsibility and liability for whatever means or method it chooses to adopt for the handling, placing, storage and consolidation of the Goods after discharge from the delivery vehicle. Furthermore, the Customer accepts responsibility and liability for any lack of quality, fault or failure of the Goods resulting from such handling, placing, storage or Consolidation of the Goods.
- 21.8. The Customer shall ensure that routes to and from the points of delivery of Goods on site are safe and suitable for the delivery vehicles, and that full and free access is available for the delivery vehicles of the Company or its transport providers.
- 21.9. The Customer shall ensure that the delivery vehicles of the Company or its transport Providers offload the Goods at the Customer's desired point. In the event of the Goods being offloaded at an incorrect point due to a fault on the part of the Customer, the Company shall not be liable for any loss arising there from, whether direct, consequential, special or general.
- 21.10. The Parties hereby indemnify each other, their agents and employees and holds them harmless against any loss, damage or liability sustained or incurred by either party, agents or Employees arising from any cause whatsoever while on the Customer's premises, provided the loss, damage liability was not occasioned by negligence of the other party.
- 21.11. The Customer, its employees or agents shall sign the Company's delivery note and this shall constitute prima facie proof (sufficient evidence) that the type and quantity of Goods recorded thereon was delivered and accepted by the Customer. In the event of a dispute regarding the delivery of the Goods and/or the quantity or quality, the onus of proving that the Goods was not delivered and/or that the quantity or quality thereof was not in accordance with the Customer's order, shall rest with the Customer.
- 21.12. Should the Customer decide to utilise its own transport vehicles and or any third party, it shall not hold the Company liable for any damages that result as a result of the use of such transport.
- 21.13. If the Company has any reason in its absolute discretion to be concerned about the creditworthiness of the Customer, the Company shall have the right to suspend and/or withhold deliveries of Goods to the Customer.
- 21.14. Subject to any provision to the contrary herein contained, the Customer shall be entitled to cancel the order or return the Goods but the Company shall be entitled to charge a cancellation fee or a reasonable fee for the return of the Goods.

## **22. OWNERSHIP AND RISK**

- 22.1. Notwithstanding the delivery of any Goods to the Customer, ownership of the Goods shall not pass until the Company has received payment in full in respect of the Price of such Goods. In the event of payment not being timeously effected, the Company reserves the right to recover possession of such Goods immediately, without notice and without the necessity to first cancel the Agreement of sale in respect of such Goods.
- 22.2. Risk in the Goods shall pass to the Customer at the point of delivery of the Goods (i.e. where signed acceptance of the



Goods takes place, or in the case of collection of the Goods, on despatch from the Company's premises).

- 22.3. Where the Customer has appointed its own transport provider to effect delivery of the goods, the Company's responsibility for providing proof of delivery of Goods will be limited to proving that the Goods were accepted by a person purporting to be the transport provider. In this case, risk shall pass to the Customer on delivery of the goods to the transport provider.

### **23. WARRANTIES**

This clause shall not apply to a Consumer:

- 23.1. The Company warrants that the Goods delivered complies with the details shown on the delivery note or invoice and complies with the Company's standard specification for such Goods.
- 23.2. The onus shall be on the Customer to ensure by examination before use that the Goods delivered is within specification.
- 23.3. Liability for breach of the warranty set out in clauses 23.1 and 23.2 shall only arise where the customer has established, in addition to any other proof required by law, that:
- 23.3.1. the Customer has inspected the Goods before use;
  - 23.3.2. the Goods has not been worked or processed since delivery;
  - 23.3.3. the Company was afforded every reasonable opportunity to inspect the Goods or any sample taken there from, and to submit the Goods or sample to its own examination and testing;
  - 23.3.4. the Customer notified the Company in verbally within 48 hours of its tests having revealed an alleged non-conformity with specification, provided that written notification shall be given by the Customer within 7 days from date of delivery;
  - 23.3.5. all records of handling, sampling, and testing and the interpretation of any tests were made available to the Company for inspection;
  - 23.3.6. the Goods was not misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the Goods.
- 23.4. Save as set out in 23.5 below, the Company shall not under any circumstances be liable for any loss or damage, whether special or general, direct or consequential, arising out of the sale of the goods by the Company to the Customer, or from any other cause whatsoever. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the use by any person of the Goods supplied by the Company.
- 23.5. The Company's sole liability in respect of defective Goods shall, in the Company's sole discretion, be to replace such Goods or to refund to the Customer the Price of such defective Goods.

### **24. WARRANTIES FOR A CONSUMER**

This clause only applies to a Consumer:

- 24.1. The Company warrants that the Goods delivered complies with the details shown on the delivery note or invoice and complies with the Company's standard specification for such goods.
- 24.2. Liability for breach of the warranty set out in clause 24.1 shall only arise where the consumer has established, in addition to any other proof required by law, that:
- 24.2.1. the Consumer has inspected the goods before use;
  - 24.2.2. the goods have not been worked or processed since delivery;
  - 24.2.3. the goods were not misused, neglected, contaminated, improperly handled, stored or altered in any way contrary to instructions and that no foreign material was added to the goods after leaving the control of the Company.
- 24.3. The Consumer warrants that it is a consumer as defined in the CPA.
- 24.4. The Consumer shall inform the Company immediately when its status as a Consumer has changed. When the status of a Consumer has changed then the provisions applicable to a Consumer in terms of these terms and conditions shall no longer apply to the Consumer.
- 24.5. The Company shall be entitled to conduct its own investigations to verify whether or not a Consumer is still a Consumer. In this regard the Consumer shall on request provide the Company with all the relevant information, including audited financial statements, to enable the Company to verify the status of the Consumer.

### **25. RESOLUTION OF TECHNICAL DISPUTES**

- 25.1. In the event of a dispute arising between the Company and the Customer regarding the quality, quantity or performance of the Goods supplied by the Company, such dispute shall initially be referred to the Company's local representative and the Customer's manager, who shall, meet and use commercially reasonable endeavours to resolve such dispute.
- 25.2. If they are unable to resolve the dispute then the Company and the Customer shall each appoint a representative with



- appropriate knowledge and standing, who shall likewise meet within 5 working days after such referral and use commercially reasonable endeavours to resolve the dispute.
- 25.3. If the dispute still remains unresolved, then the parties may refer the matter to:
- 25.3.1. An independent expert appointed by; or
- 25.3.2. Arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa proceed directly to the jurisdiction of the courts in terms of Clause 10; or
- 25.4. Neither the Company nor the Customer may resort to the jurisdiction of the courts in terms of Clause 10 without first following the procedure in Clauses 25.1, 25.2 and 25.3, except to obtain urgent relief from the courts.
- 25.5. In the event of a dispute or complaint by a Consumer who purchased the Goods from a customer who is a retailer or distributor regarding the quality, quantity or performance of the goods supplied, the Customer must take all reasonable steps to assist the Consumer as required in terms of the CPA. The Customer shall advise the Company of the complaint and all steps taken to resolve the dispute or complaint.
- 25.6. Should the Customer not succeed in resolving the dispute or complaint then the Customer shall advise the Company accordingly and the Company shall use reasonable endeavours to resolve the complaint as soon as possible in accordance with the provisions of clauses 25.1 and 25.2.
- 25.7. In the event of a dispute or complaint by a Consumer, who purchased the Goods directly from the Company, regarding the quality, quantity or performance of the Goods supplied, the Company shall use reasonable endeavours to resolve the dispute or complaint as soon as possible in accordance with the provisions of clauses 25.1 and 25.2. Despite the above, the Consumer is not prevented from referring any unresolved dispute between the Company and the Consumer to the National Consumer Commission established under the CPA.
- 25.8. Nothing in this clause prevents the Customer to take legal action against the Company.