

## 1. Definitions

In these Terms:

**Agreement** means the agreement constituted by these Terms and the relevant Quote ;

**Australian Consumer Law** has the meaning given in Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

**Consumer Guarantee** has the meaning given in the Australian Consumer Law;

**Customer** means the person or entity named in the relevant Quote;

**Commercial Rates** means the amount charged by Packforce on an hourly or daily basis for Services as varied by Packforce by notice in writing to the Customer from time to time;

**Delivery** means provision of the Goods to the Customer at the Location or at the direction of the Customer;

**Goods** means the Customer products and packaging provided to Packforce from time to time in accordance with an Agreement;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any other act imposing a goods and services tax in Australia;

**Location** means the location specified in the Quote as the place for Delivery, or such other location agreed between Packforce and the Customer in writing;

**Packforce** means the Cerebral Palsy Alliance (ABN 45 000 062 288) trading as "Packforce" of 187 Allambie Road, Allambie Heights NSW 2100;

**Price** means the fee to be paid to Packforce in respect of the Services under these Terms;

**Quote** means the document accompanying these Terms which sets out the proposed terms on which Packforce is to provide Services to the Customer;

**Relevant Information** includes all matters that may affect Packforce's ability to supply the Services in a safe manner that conforms to the Customer's requirements;

**Services** means the services to be provided by Packforce referred to in the Quote, or otherwise referred to in this Agreement, including any Delivery or storage of Goods; and

**Taxes** means all taxes, levies, imposts, deductions, charges, excises, withholdings and duties (including, without limitation stamp and transaction duties) together with any related interest, penalties, fines and expenses.

## 2. Quotes

- 2.1 Any Quote is based on information supplied by the Customer and may be varied when a sample of Goods is sighted. Packforce may submit a revised Quote within seven (7) days of sighting the sample of Goods.
- 2.2 Without a full working sample of Goods provided by the Customer, the stated unit and/or total price in a Quote may vary.
- 2.3 Any Quote given by Packforce will remain open for acceptance for a period of thirty (30) days after the date the Quote was issued to the Customer.
- 2.4 A Customer who wishes to accept a Quote must sign the Quote where indicated or otherwise notify Packforce in writing of its acceptance of the Quote.

## 3. Agreement Terms

- 3.1 An agreement for the provision of Services is created between the parties on receipt by the Customer of notice from Packforce confirming its agreement to provide the Services as set out in the Quote (as amended by written agreement of the parties).
- 3.2 All Services provided by Packforce to the Customer will be subject to these Terms, unless otherwise agreed in writing by Packforce.
- 3.3 Any Customer purchase order terms and conditions, or other terms provided by the Customer, will not apply.
- 3.4 The Customer agrees that Packforce may procure one or more of its affiliates to provide any part of the Services or act as the billing and/or collection agent.
- 3.5 Packforce will check Goods provided by the Customer and will advise the Customer within three (3) business days if the Goods provided are inconsistent with the description in the Quote. In that event, Packforce may in its sole discretion refuse to provide the Services or return the Goods to the Customer (at the Customers' cost).
- 3.6 Packforce's records will be conclusive evidence of the details of the Quote, when the Agreement was formed and the Services supplied by Packforce.

## 4. Storage

- 4.1 Subject to this Agreement, Packforce agrees to receive, store and release Goods in accordance with the Quote and subject to the Customer's reasonable directions.
- 4.2 Packforce will store the Goods at its discretion at any one or more warehouses identified to the Customer from time to time. Identification of any specific location in a Packforce warehouse does not guarantee the precise location of the Goods.
- 4.3 If Packforce determines that the original palletisation of Goods must be broken down for storage purposes, Packforce is authorised to break down and store the Goods in any manner it sees fit without notice to the Customer.
- 4.4 The Customer must provide Packforce all documents or information relevant to the safe and proper warehousing, handling, storage, and transportation of the Goods. The Customer indemnifies Packforce for all loss suffered by Packforce which arises from any failure to provide Packforce with full and accurate information required by this clause.
- 4.5 Packforce reserves the right to terminate storage and to require the removal of the Goods, or any portion of the Goods, by giving the Customer thirty (30) days prior written notice. The Customer will be responsible for payment of all costs and charges incurred by Packforce attributable to the removal or storage of the Goods during this time . If the Goods are not removed by the Customer within the period of time nominated by Packforce, Packforce may exercise its rights under applicable law including but not limited to selling the Goods at its sole discretion.
- 4.6 The Customer grants Packforce a lien on all Goods in Packforce's possession, custody or control for all charges, advances or amounts of any kind due to Packforce under this Agreement or under invoices issued to the Customer by Packforce (including charges for storage, handling, transportation, demurrage, terminal charges, insurance, labour, and any other charges incurred). Packforce may refuse to surrender possession of the Goods until all charges or debts owed by the Customer to Packforce are paid in full. If such amounts remain unpaid for thirty (30) days after Packforce's demand for payment,

Packforce may sell the Goods in any manner it determines, and will apply the proceeds of sale to the amounts owed. The Customer remains responsible for any outstanding amount due to Packforce.

- 4.7 If Packforce stores the Goods beyond thirty (30) days of the due date of an invoice, the Customer will be liable to pay Packforce for storage of the Products at the rate of \$40 per pallet per month unless otherwise agreed until the Goods are delivered to the Customer, picked up by the Customer or disposed of by Packforce.

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### 5. Delivery

- 5.1 Unless otherwise agreed by Packforce, the Customer must make all arrangements necessary to enable Delivery at the Location.
- 5.2 Where Packforce has agreed to arrange the Delivery of the Goods, Packforce will endeavour to deliver, or arrange for Delivery of, the Goods to the Customer at the Location by the scheduled Delivery date. However, if Packforce is unable to deliver the Goods by such date and/or at the Location, Packforce will not be liable for any delay or failure to deliver. Packforce undertakes to notify the Customer as soon as reasonably possible of any Delivery failure or delay, and to use all reasonable efforts to Deliver the Goods to the Customer at the Location, or an alternative location agreed with the Customer, without further delay.
- 5.3 If re-delivery of the Goods is required at an alternative time to the scheduled Delivery date or at an alternative Location through no fault of Packforce, an additional re-delivery fee may be charged.
- 5.4 The Customer agrees that risk in the Goods passes to the Customer at the time of Delivery of the Goods at the Location. Packforce accepts no liability or responsibility for the Goods once risk has passed to the Customer.
- 5.5 The Customer must supply Packforce with a valid contact email and phone number for a person responsible for accepting Delivery of the Goods.
- 5.6 Any changes to the Customer's address details, payment details or the instructions for a Delivery must be communicated to Packforce in a written notice seventy-two (72) hours prior to the time for that Delivery advised by Packforce.
- 5.7 Packforce will not accept responsibility for any unforeseen damage, deterioration or theft to Goods which have been Delivered to the Location.
- 5.8 Packforce does not Deliver on public holidays, and if a Delivery is requested or scheduled for a public holiday, an alternate Delivery date will be allocated.
- 5.9 Goods delivered by Packforce will be deemed to have been accepted unless within forty-eight (48) hours of Delivery the Customer notifies Packforce in writing of any deficiencies and provides reasonable evidence of such deficiency.

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### 6. Price

- 6.1 Subject to clause 6.2, the Price payable by the Customer will be:
- the price or rates charged specified in the Quote; or
  - if no price or rates are specified in the Quote, the price charged based on hours performed at Commercial Rates, and unless otherwise stated is specified exclusive of GST and Taxes.
- 6.2 All price-lists and quotations provided by Packforce from time to time are based on prices and availability at the time of issue. The Customer acknowledges and agrees that these prices are subject to variation

and that final prices stipulated in the invoice are binding.

- 6.3 Packforce may by giving notice to the Customer at any time increase the Price of the Services to reflect any increase in the cost to Packforce of providing the Services beyond Packforce's reasonable control (including, without limitation, Taxes, cost of labour, materials and other manufacturing costs) in which case, the Customer may, by giving not less than fourteen (14) days' notice in writing terminate the Agreement if it does not agree to the increase in Price.

- 6.4 If Packforce is required to provide additional Services not included in the Quote as a result of:

- any Relevant Information being inaccurate or incomplete;
- a requirement for a comprehensive stocktake of Goods provided to Packforce;
- Goods provided not conforming to the description or sample provided by the Customer;
- any act or omission of the Customer or its officers, employees or agents; or
- a request by the Customer for Packforce to provide additional Services,

such additional time incurred and /or additional Services provided will be subject to these Terms and charged for in accordance with clause 6.1(b).

- 6.5 The Customer must pay, reimburse or indemnify Packforce against all GST and Taxes, payable in respect of the Goods and Services or otherwise under these Terms.

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### 7. Payment

- 7.1 Payment of the Price will be due:
- prior to provision of the Services; or
  - where Packforce agrees to provide credit facilities to the Customer, thirty (30) days from the invoice date, and this clause is an essential provision of these Terms.
- 7.2 Any deposit paid by the Customer is non-refundable and will be credited against the Price payable by the Customer.
- 7.3 Payment must be made by direct debit, EFT transaction, or any other method agreed by Packforce.
- 7.4 Packforce reserves the right to withdraw any credit facility if an event specified in clause 11.1 occurs in relation to the Customer or if the Customer exceeds or Packforce reasonably determines that the Customer is likely to exceed the credit limit agreed by the parties.
- 7.5 The Customer must not set off any amounts due from Packforce against the Price. The Customer irrevocably authorises Packforce to set off any amount payable by Packforce on any account against any money owing by the Customer under these Terms.
- 7.6 If the Customer fails to pay any amount that is due and payable to Packforce, Packforce may charge the Customer interest on the unpaid portion at a rate of 2% per calendar month (calculated daily) for the period commencing on the day after the due date for payment and ending on the date that such amount is paid in full.
- 7.7 If the Customer defaults in payment of any invoice when due, the Customer must on demand pay any reasonable costs and expenses incurred by Packforce in collecting or enforcing collection of all outstanding monies including but not limited to all legal costs and any collection agency charges.

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### 8. Cancellation

- 8.1 Services being provided by Packforce cannot be changed or cancelled once the Agreement has been created unless agreed by Packforce in writing (in its absolute discretion).
- 8.2 The Customer must pay all invoices, fees, charges and monies relating to the Services, in addition to any costs incurred in disposal of any Goods, and all reasonable cancellation charges imposed by Packforce.
- 8.3 Where the Customer does not accept Delivery of Goods following cancellation of any Services, the Customer disclaims any rights in relation to the Goods, which Packforce may dispose of in its absolute discretion and the Customer will be liable for any costs incurred by Packforce in disposing of the Goods.

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### 9. Customer warranties and acknowledgements

- 9.1 In entering into the Agreement, the Customer represents and warrants that:
- (a) it will provide all Relevant Information to Packforce when seeking a Quote or obtaining Services;
  - (b) Goods are properly marked, itemised, packaged, labelled and classified for handling and are fit for storage and any transportation as may be required. The Customer further acknowledges that Packforce will not accept Goods that are not properly packaged or which, in Packforce's opinion, are not suitable for movement or storage;
  - (c) unless otherwise agreed by Packforce, the Goods are not considered hazardous materials and/or dangerous goods at the time the Goods are provided to Company;
  - (d) the Goods will be limited to any permissible materials and quantities which may be notified to the Customer from time to time, and agrees to properly classify the Goods, accurately describe the Goods, and provide Packforce with all necessary or useful information for the safe storage and handling of the Goods;
  - (e) Packforce will not be responsible for any damage or breakages of Goods in performing the Services;
  - (f) the Customer will ensure Packforce has full and safe access to the Location for the purpose of carrying out any Delivery and all the necessary information required to make a Delivery;
  - (g) it has not entered into the Agreement in reliance on or as a result of any statement or any conduct of any kind or on behalf of any other person;
  - (h) it holds sufficient and adequate insurance customary for a business of the type operated by the Customer, including but not limited to public liability insurance for an amount of not less than \$20 million; and
  - (i) no event specified in clause 11.1 has occurred.

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### 10. Packforce warranties

- 10.1 In entering into the Agreement, Packforce represents and warrants that:
- (a) any Services provided are fit for the purpose for which they are intended, if such purpose has been set out in writing in the Quote;

- (b) it holds sufficient and adequate insurance customary for a business of the type operated by Packforce, including but not limited to public liability insurance for an amount of not less than \$20 million; and
- (c) no event specified in clause 11.1 has occurred.

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### 11. Default & Consequences of Default

#### 11.1 If, at any time:

- (a) a party (**Defaulting Party**) is in breach of any obligation (including those relating to payment) which is unable to be rectified or fails to remedy such breach within ten (10) business days of receiving a notice from the other party (**Non-Defaulting Party**) which requires the Defaulting Party to remedy the breach;
- (b) any account remains unpaid at the end of the second month after the date on which the Services were supplied;
- (c) in the Non-Defaulting Party's reasonable opinion the Defaulting Party will be unable to meet its payments as they fall due;
- (d) the Defaulting Party:
  - (1) becomes insolvent or bankrupt; or
  - (2) convenes a meeting with its or their creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its or their creditors;
- (e) a receiver, manager, administrator liquidator (provisional or otherwise) or similar person is appointed in respect of the Defaulting Party or any asset of the Defaulting Party; or
- (f) the Non-Defaulting Party ascertains that any representation, warranty or statement made by the Defaulting Party in connection with these Terms is untrue or misleading (whether by omission or otherwise) in any material respect,

then, without prejudice to any other remedies Non-Defaulting Party may have:

- (g) the Non-Defaulting Party will be entitled to terminate the Agreement and cancel the Services which have yet to be performed; and
- (h) all amounts owing to each party will, whether or not due for payment, immediately become payable.

- 11.2 The Non-Defaulting Party will not be liable to the Defaulting Party for any loss or damage the Defaulting Party suffers because the Non-Defaulting Party exercised its rights under this clause.

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### 12. Limitation on damages

#### 12.1 Where any applicable legislation:

- (a) implies any term, condition or warranty into the relationship between the parties or into these Terms;
- (b) imposes a Consumer Guarantee in respect of the Services; or
- (c) otherwise provides the Customer with a particular remedy against Packforce, and

that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition, warranty, Consumer Guarantee or remedy (**Non-Excludable Condition**) then:

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- (d) that Non-Excludable Condition will be deemed to be included in these Terms; or
- (e) in the case of a Non-Excludable Condition imposed on any Services, that Non-Excludable Condition will apply in respect of those Services.
- 12.2 All terms, conditions and warranties (whether express or implied and whether arising by virtue of statute or otherwise) as to the quality and suitability of the Services, except any Non-Excludable Condition, are excluded from these Terms.
- 12.3 Packforce's liability for breach of the Agreement and for breach of any Non-Excludable Condition (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law), will be limited, at Packforce's option, in any one or more of the ways permitted by applicable legislation, to:
- (a) the re-supply of the Services; and/or
- (b) the payment of the cost of having the Services provided again; and/or
- (c) the refund of the Price paid by the Customer in respect of the Services,
- provided that:
- (d) the Customer notifies Packforce within seven (7) days of the date of provision of the Services (time being of the essence); and
- (e) Packforce is given a reasonable opportunity to investigate the Customer's claim.
- 12.4 To the fullest extent permitted by law, each party excludes any liability to the other party for indirect, consequential, special or economic loss or damage or exemplary damages arising under or in connection with the Agreement or any Services including loss or damage such as:
- (a) loss of revenue, profits, production or opportunity;
- (b) increases of operating and financing costs;
- (c) damage to the Location or any other premises; or
- (d) damage to reputation (whether real or perceived),
- even if such losses are foreseeable, and even if the relevant party is aware or advised of the likelihood of such loss or damage occurring. This clause will not apply to the extent that such loss is caused by breach of a Consumer Guarantee.
- 12.5 Subject to clause 12.7, under no circumstances will either party be liable to the other party for any claim in excess of the aggregate amount paid to Packforce by the Customer during the twelve (12) month period prior to the date any claim is made, despite clause 12.1 above.
- 12.6 Any warranty for the Services will not extend to defects that have not arisen solely from faulty workmanship, or where the Goods received have not been properly handled or stored following Delivery.
- 12.7 Nothing in the Agreement will exclude or in any way limit either party's liability for death or personal injury, fraud or breach of confidentiality or for any cause of action which cannot be limited or excluded under an applicable law.
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13. **Dispute Resolution**
- 13.1 Any disputes concerning the construction or interpretation of the Agreement or a party's performance of its obligations under the Agreement, which are not resolved through good faith consultation between the parties within thirty (30) days of initial notification by one party to the other party, may thereafter be submitted by either party to mediation in accordance with the Mediation Rules published by the Resolution Institute prior to any party commencing legal proceedings (other than injunctive proceedings).
- 13.2 Nothing in this clause 13 is intended to prevent either party from seeking urgent injunctive relief from a court of competent jurisdiction.
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14. **General**
- 14.1 If any provision of these Terms is found to be invalid, void or illegal or unenforceable in any jurisdiction, it will have no force or effect in that jurisdiction and will be severed from the Terms without affecting the validity, existence, legality and enforceability of the remaining provisions.
- 14.2 No part of an Agreement between the parties may be varied otherwise than in writing signed by an authorised signatory of each party.
- 14.3 Packforce may licence or sub-contract all or any part of its rights and obligations under the Agreement by written notice to the Customer but will remain responsible to the Customer in respect of the actions of such licensee or subcontractor.
- 14.4 Neither the Customer nor Packforce will be held responsible for any delay or failure in performance of any part of the Agreement if and to the extent that it is caused by acts of God or nature (including wild animals), acts of terrorism, war or war-like conditions, mob violence, earthquake, natural disasters, acts or failures to act of any governmental authority, or any other events or circumstances beyond the reasonable control of the applicable party (**Force Majeure**).
- 14.5 No Force Majeure events or circumstances will excuse the Customer of its obligation to make any payments that are owed to Packforce for Services delivered before the Force Majeure event or that accrue due to the Customer's continued acceptance of Services.
- 14.6 The failure of either party to exercise any rights under the Agreement will not operate as a waiver of the party's right to exercise the same or different rights in any subsequent instance.
- 14.7 The Agreement is governed by the laws of New South Wales Australia and the parties agree to submit to the exclusive jurisdiction of the courts of New South Wales and Australia.
- 14.8 Packforce's privacy policy forms part of this Agreement, and is set out on the Cerebral Palsy Alliance website at <https://cerebralpalsy.org.au/privacy/>. The privacy policy details how Packforce collects and uses the Customer's personal information. The Customer should refer to the privacy policy before obtaining a Quote. Information collected may also be used to inform the Customer of additional products and services which may be of interest to the Customer.
- 14.9 The Agreement contains the entire agreement between the parties in respect of its subject matter and supersedes any prior negotiations, proposals, discussions, representations and summaries between the parties (including any Customer standard purchase terms).
- 14.10 Packforce may, from time to time, amend these Terms to reflect changes in market conditions, changes in Packforce's business processes, changes to technology and any changes required by law. If amendments are made to these Terms, Packforce will notify the Customer of any such amendments, including by posting updated

Terms on the Packforce website. Following notification of such changes, any further request for Services from Packforce will constitute acceptance of the updated Terms.

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**15. Interpretation**

- 15.1 Words importing the singular number include the plural, and vice versa.
- 15.2 Any reference to a person includes a reference to a body corporate, firm, authority, government or governmental agency.
- 15.3 Words which have a particular meaning in the “GST Law” (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning in these Terms, unless the context otherwise requires.
- 15.4 If two or more parties are specified as the Customer a liability of those persons will be joint and several.
- 15.5 Where an expression is defined, another grammatical form of that expression has a corresponding meaning.
- 15.6 The contra proferentem rule will not apply to these Terms. The identity of the party responsible for drafting these Terms will not affect the construction or interpretation of the Agreement.