

TERMS AND CONDITIONS OF SALE (Paper)

**1. INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

<b>Business Day:</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Conditions:</b>	means, the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6;
<b>Contract:</b>	means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
<b>Customer:</b>	means the person or firm who purchases the Goods from the Supplier;
<b>Force Majeure Event:</b>	has the meaning given in clause 12;
<b>Goods:</b>	means the goods (or any part of them) set out in the Order;
<b>Order:</b>	means the Customer's order for the Goods, as set out in either the Customer's purchase order form, or overleaf, or in the Customer's written acceptance of the Supplier's quotation, as the case may be;
<b>Specification:</b>	means any specification for the Goods that is agreed in writing by the Customer and the Supplier;
<b>Supplier:</b>	Lindenmeyr International Ltd. registered in England and Wales with company number: 00572338.

**2. CONSTRUCTION**

2.1 In these Conditions, the following rules apply:

- 2.1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.1.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any

subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2.1.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.1.5 A reference to **writing** or **written** includes faxes and e-mails.

### **3. BASIS OF CONTRACT**

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

3.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

3.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

3.5 A quotation for the Goods given by the Supplier shall not constitute an offer.

3.6 In the event of any inconsistency between the terms of the Order and these Conditions, these Conditions shall prevail unless the contrary has been agreed in writing between the Supplier and Customer.

3.7 Except where inconsistent with these Conditions or with the express terms of any contract between the Supplier and the Customer, in which case these Conditions or the express terms shall prevail, the Paper and Paperboard trade customs for the time being in force, which are obtainable from us on request, shall apply to all contracts between the Supplier and the Customer.

### **4. GOODS**

4.1 The Goods are described in the Specification.

4.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### **5. DELIVERY**

5.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

- 5.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 5.5 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.6 In the event the Customer requires an alternative mode of delivery from the Supplier's usual mode of delivery, any additional transport costs arising from such alternative mode of delivery will be borne by the Customer.

## **6. QUALITY**

- 6.1 The Supplier warrants that on delivery the Goods shall:
- 6.1.1 conform in all material respects with their description and any applicable Specification;
  - 6.1.2 be free from material defects in design, material and workmanship; and
  - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Customer gives notice in writing to the Supplier within i) 3 business days of delivery in the case of obvious deviations in quality/grade, external damage or quantity; ii) 7 business days of delivery in the case of deviations detectable through superficial inspection or simple examination before use; and iii) 90 days in the case of deviations detectable only after detailed inspection, test or normal machine cycle; that some or all of the Goods do not comply with the warranty set out in clause 6.1; and
  - 6.2.2 the Supplier is provided reasonable supporting traceable documentation of the deviation and opportunity of examining such Goods; and
  - 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

- 6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
  - 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 6.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 6.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **7. TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery, unless otherwise specified by Supplier.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 7.2.1 the Goods;
  - 7.2.2 any VAT payable in respect of the Goods; and
  - 7.2.3 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 7.3.2 store the Goods so that they remain readily identifiable as the Supplier's property;
  - 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 7.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and
  - 7.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may use the Goods in the ordinary course of its business as specified on the Order.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7.5 Any claim by the Customer to the Supplier in respect of any alleged defect in the quality of the Goods where the defect would have been revealed by reasonable examination of the Goods on arrival, must be made in writing to the Supplier in accordance with Section 6.2 above.
- 7.6 If within the period stipulated in clause 7.5 above, the Customer notifies the Supplier of any alleged defect in respect of the Goods (**Notice**), the Supplier or Supplier's agent shall, following receipt of such Notice, may at its discretion examine the Goods the subject of the alleged defect and in the event the Supplier agrees such Goods are defective, the Supplier shall be entitled, at its option to:
- 7.6.1 replace the defective Goods; or
  - 7.6.2 accept the return of the defective Goods and credit the Customer with the price of such Goods
- 7.7 The return of any Goods shall not be made without prior agreement between the Customer and the Supplier.

## **8. PRICE AND PAYMENT**

- 8.1 The price for the sale of any merchandise shall be Supplier's price prevailing at time of shipment unless otherwise specifically stated on the face of an Acknowledgement. The price, if any, set forth on any Acknowledgment is the price in effect as of the date of such confirmation or acknowledgment and is included thereon for information purposes only. Any such agreement as to pricing or price protection is based on manufacturer's then current price and price protection guidelines, which are subject to change. Notwithstanding any such agreement any increase in the cost to Seller of the purchase and delivery of the merchandise, whether by way of a change in manufacturer's price, imposition of surcharge, change in freight policies or costs, tariffs, duties or otherwise, including with respect to orders previously placed and accepted, will result in a correlative increase in the price payable by Customer. In the case of sales arranged through cooperatives, purchasing groups, print management companies or affiliated entities, Supplier may pay a rebate to the cooperative, purchasing group, print

management company or affiliated entity in connection with such sale. Notwithstanding the foregoing, by making a purchase, Buyer specifically agrees to the price stated. Payment terms are subject to credit review. If at any time and for any reason the financial condition of Customer shall become unsatisfactory to Seller, Supplier may require cash or satisfactory security on shipments or deliveries or prior to placing any mill order or prior to the last date to change any mill order, or otherwise change any previous payment terms, without impairing the obligation of Customer to take and pay for the quantity of goods ordered. Supplier may accept credit or debit cards in its discretion, but no prompt payment or other discounts or rebates shall apply to any payments made using any credit or debit card.

- 8.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Goods is (unless otherwise stated) inclusive of the costs and charges of packaging, insurance and transport of the Goods.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT when chargeable on the supply of the Goods.
- 8.5 The Customer shall pay the invoice in full and in cleared funds by the date set out in the agreed payment terms agreed with the Customer. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the maximum applicable statutory interest rate. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **9. TERMINATION**

9.1 Without prejudice to any rights that the Supplier may have against the Customer, the Supplier may, by giving written notice to the Customer, terminate the Contract or suspend the delivery of the Goods in the following circumstances:

- 9.1.1 any sum owing by the Customer to the Supplier is overdue whether under the terms of the Contract or any other contract to which these Conditions relate; or
- 9.1.2 the Customer commits a material and/or persistent breach of the terms of the Contract or any contract entered into between the Customer and the Supplier which, if capable of remedy, has not been so remedied within 14 days from the date of such breach; or
- 9.1.3 the Customer pledges or in any way charges by way of security for any indebtedness any of the Goods which remain the property of the Supplier; or
- 9.1.4 the Customer becomes subject to any of the events listed in clause 10.1 below, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly,

then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

## **10. CUSTOMER'S INSOLVENCY OR INCAPACITY**

10.1 For the purposes of clause 9.1.4, the relevant events are:

- 10.1.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 10.1.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 10.1.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 10.1.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

- 10.1.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 10.1.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 10.1.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 10.1.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 10.1.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.1 to clause 10.1.8 (inclusive);
  - 10.1.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - 10.1.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - 10.1.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 10.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as of such termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **11. LIMITATION OF LIABILITY**

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 11.1.2 fraud or fraudulent misrepresentation;
  - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 11.1.4 defective products under the Consumer Protection Act 1987; or
  - 11.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.



11.2 Subject to clause 11.1:

11.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including but not limited to loss of business opportunity, loss of revenues or loss of savings; and

11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods.

## **12. FORCE MAJEURE**

Supplier's performance is excused if Supplier's performance is, in whole or in part, prevented, delayed, hindered or rendered impracticable or more expensive by a circumstance caused in whole or in part by any condition beyond Supplier's reasonable control, whether affecting the Supplier, the carrier or Supplier's supplier or manufacturer, including as a result of failure of Supplier's suppliers to make adequate or timely delivery of the merchandise (including as a result of complete or partial mill sale or shutdown); general labor disturbance such as but not limited to strikes, lockouts or other labor disputes; war (declared or not), hostilities, military mobilization, riot, armed conflict, insurrection, embargo or blockade; terrorism, sabotage or piracy; imposition of duties, tariffs, quotas or other import restrictions; plague, epidemic, pandemic, widespread infectious disease or public health crisis, including quarantine or other employee restriction or other emergency, statute, regulation, order or any other action of any governmental authority; transportation breakdown or delay; rejected mill runs; act of God or natural disaster such as but not limited to storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought, explosion, fire; destruction of machines, equipment factories and any kind of installation; prolonged breakdown of telecommunication or electric current; accidents; shortage or inability to obtain material or supplies, or any other circumstance beyond Supplier's control whether or not foreseeable or abatable or subject to mitigation by Supplier.

## **13. GENERAL**

### **13.1 Assignment and subcontracting**

13.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **13.2 Notices**

13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered

personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **13.3 Severance**

13.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### **13.4 Waiver**

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### **13.5 Third party rights**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

### **13.6 Variation**

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

### **13.7 Governing law and jurisdiction**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

