

PUNCHBOWL

Packaging

E-COMMERCE TERMS AND CONDITIONS OF PURCHASE

1. Acceptance

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

2. Terms of Use / Privacy Policy

- (a) In addition to these Terms, the Website Terms of Use and the Privacy Policy also govern your access to and use of the Website. You should ensure that you have read the Terms of Use and the Privacy Policy in conjunction with these Terms and Conditions. By accessing the Website you are deemed to have read and agree to be bound by the Terms of Use, the Privacy Policy and these Terms and Conditions.

3. Ordering, Price, Payment, Cancellation and Delivery

- (a) You may order Goods described on the Website for the price specified on the Website.
- (b) All prices are expressed in New Zealand dollars and are exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985, as well as any other applicable taxes, duties or charges ("GST"). Prices are inclusive of metro freight. Any other delivery charges are exclusive unless otherwise stated. Rural freight has a set price \$4.50 excl GST. Punchbowl reserves the right to amend the prices of Goods from time to time without prior notice.
- (c) Payment for Goods ordered, together with any applicable GST, freight or other charges must be made in the manner described on the Website at the time the order is submitted, or as otherwise agreed in writing with Punchbowl.
- (d) In placing an order you will be required to supply certain information, such as the Buyer's name, email address, delivery address and any other ordering information specified on the Website. While Punchbowl will take all reasonable steps to protect the Buyer information supplied, Punchbowl cannot guarantee the complete security of any data disclosed online. By placing an order via the Website you accept the inherent risk of providing personal information online.
- (e) The Buyer is liable for every order made under the Buyer's login (if applicable) or using the Buyer's credit card. An order may not be cancelled once it has been submitted. No refunds will be provided for a change of mind.
- (f) Punchbowl may decline any order placed or cancel any order for any reason. If Punchbowl declines or cancels an order, or is unable to supply the Goods ordered, it will reimburse the Buyer for any payments already made by the Buyer and received by Punchbowl.
- (g) Delivery of the Goods to the Buyer will take place in the manner chosen by Punchbowl unless otherwise specified on the Website or as otherwise agreed in writing.
- (h) Punchbowl targets dispatch of Goods ordered within 1-2 working days of the order being received and accepted. Punchbowl will use all reasonable endeavours to deliver the Goods to the Buyer's delivery address in accordance with any stated or agreed target delivery date but shall not be liable for any delay in delivery.

4. Possession and Risk

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

5. Goods Descriptions & Availability

- (a) Details contained on the Website relating to Goods, including any descriptions, specifications or claims made in relation to Goods, have been prepared in accordance with New Zealand law and may not satisfy the laws or regulations of any other jurisdiction. They are also subject to change. Punchbowl does not warrant that the details, descriptions or claims on the Website concerning Goods will satisfy the laws of any other jurisdiction.
- (b) All Goods displayed on the Website are subject to availability.
- (c) Punchbowl will make all reasonable efforts to accurately display the attributes of the Goods, including applicable colours, however, the actual colour you see will depend on your computer and Punchbowl cannot guarantee your computer will accurately display such colours.

6. Short or Incorrect Orders / Defective Goods

- (a) The Buyer is responsible for examining the Goods upon delivery and must notify Punchbowl of any defects, whether as to quantity or quality within 7 days of delivery, together with the relevant invoice number.
- (b) If Goods are ordered in excess of the Buyer's requirements or in error, Punchbowl reserves the right to charge a restocking fee of up to 25% of the original invoice value where those Goods are returned, together with freight

costs. An authorisation is required from Punchbowl prior to the return of any Goods and Punchbowl is under no obligation to grant any such authorisation. Goods may only be returned if the parcel is unopened.

- (c) If Goods are purchased on the Website, and those Goods do not conform to specification or are defective, then provided such Goods are returned together with the relevant invoice or shipping note to Punchbowl within seven (7) days of the date of first use, Punchbowl will at its option, replace such Goods, issue a credit note, or refund the price paid, provided that:
- (i) The Buyer must supply the date and number of any invoice relating to the Goods;
 - (ii) Punchbowl must have a reasonable opportunity to inspect the Goods; complained of;
 - (iii) Punchbowl shall have no obligation to remedy any damage or defect caused by:
 - Any willful act or negligence of the Buyer or any other person other than Punchbowl or its agents, employees or subcontractors;
 - Unintended use of the Goods or failure to maintain or store the Goods in accordance with the stated or recommended instructions or requirements provided by Punchbowl.

7. **Ownership of the Goods**

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

8. **Liability and Warranty**

- (a) The Goods are subject to standard tolerances of the industry.
- (b) The only warranties provided are as expressly stated on the Website or in a written and signed agreement between Punchbowl and the Buyer. All other guarantees, warranties and representations which are or might be implied by law, trade, custom or otherwise, that are capable of being legally excluded, are expressly excluded.
- (c) The Buyer agrees that the Buyer is acquiring the goods from Punchbowl for business purposes and accordingly the guarantees and rights expressed or implied in the Consumer Guarantees 1993 Act in favour of the Buyer do not apply.
- (d) You acknowledge that you have made your own investigations as to the fitness of the Goods for your purpose.
- (e) Except as may be expressly provided in a separate written agreement signed between Punchbowl and the Buyer, to the maximum extent permitted by law Punchbowl, its employees or agents will not be liable to the Buyer in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Buyer or by any other third party, whether direct or consequential which relates to the purchase and/or use of the Goods.
- (f) To the extent Punchbowl is found liable for any reason for any loss, damages or costs suffered or incurred by the Buyer arising from any breach of these Terms or for any other reason, to the maximum extent permitted by law any such liability of Punchbowl to the Buyer is limited to the lesser of:
- (i) The price paid for the relevant Goods to which the liability relates; and
 - (ii) The actual loss, damage or cost suffered by the Buyer.
- (g) The Buyer agrees to assume all responsibility for any third party claims that may arise in connection with the use of the Goods where the Buyer has a relationship with that third party and has supplied the Goods to that third party for use, for example, where the Buyer uses the Goods to pack a third party's kiwifruit pursuant to a packing agreement between the Buyer and the third party.

9. **Use of goods**

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

10. **Force Majeure**

- (a) Punchbowl does not breach these Terms if its breach is caused by any matter beyond the reasonable control of Punchbowl, not including financial difficulty ("force majeure").
- (b) Where Punchbowl is unable, wholly or in part, by reason of a force majeure event to carry out any obligation under these Terms and:

- (i) Gives the Buyer immediate notice of the force majeure event;
- (ii) Uses all reasonable diligence to remove the force majeure event as quickly as possible; that obligation is suspended so far as it is affected by the force majeure event during its continuance.

11. **Intellectual Property**

- (a) The Buyer acknowledges that all intellectual property in the Goods belong to Punchbowl, or Punchbowl is otherwise entitled to such intellectual property rights under licence.

12. **Buyer Default and Termination**

- (a) If Punchbowl has reasonable grounds to believe the Buyer is in material breach of these Terms; or the Buyer commits an act of bankruptcy or is placed into liquidation, or a receiver or manager is appointed in respect of any part or the whole of the Buyer's assets, Punchbowl may withhold delivery of the Goods; or treat any order for Goods to have been cancelled and enforce its security interest.
- (b) Termination or cancellation of any order will not affect the rights, powers, remedies, obligations, duties and liabilities of either party which have accrued before termination.

13. **General**

- (a) If any of these Terms are held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining Terms shall continue in force.
- (b) If Punchbowl delays or does not exercise any of its rights or remedies under these Terms that will not be a waiver of the right or remedy.
- (c) Punchbowl shall have the right without prior notice to the Buyer to setoff in discharge or reduction of any debt payable to it by the Buyer, any monies payable on whatever account by Punchbowl to the Buyer, including monies payable to the Buyer by Punchbowl as agent for a third party.
- (d) Any notice may be given in person, posted or sent by email. Where a notice is given in person delivery occurs at the time of physical delivery; where a notice is sent by email, delivery occurs at the time of transmission without any notification of error or failed delivery.
- (e) The Buyer may not assign or subcontract its rights or obligations under these Terms without the prior written consent of Punchbowl.
- (f) These Terms apply in preference to any terms supplied by the Buyer. Except as may be set out in a separate written and signed agreement between Punchbowl and the Buyer, these Terms represent the entire agreement of Punchbowl and the Buyer in relation to the supply of Goods.

14. **Governing Law**

- (a) These Terms are governed by, and are to be construed in accordance with the laws of New Zealand and the Buyer agrees to submit to the non exclusive jurisdiction of the Courts of New Zealand.

15. **Interpretation**

- (a) In these Terms:
 - "Punchbowl" means Punchbowl Packaging Limited together with its successors and permitted assigns.
 - "The Buyer" means the person, firm or company buying Goods from Punchbowl together with that person, firm or company's executors, administrators, successors and permitted assigns.
 - "Goods" means all packaging, products or goods of whatever kind that Punchbowl offers for sale on the Website from time to time.
- (b) Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.
- (c) Words referring to the singular include the plural and vice versa.
- (d) A reference to a person includes any other entity or association recognised by law.
- (e) A reference to "\$" and "dollars" are references to New Zealand currency unless otherwise stated.
- (f) Everything expressed or implied in these terms which involves more than one person binds and benefits those people jointly and severally.

16. **Contact**

- (a) Punchbowl Packaging Limited may be contacted in any of the following ways:

Post: 646 Glenbrook Road, RD4, Pukekohe, 2679
Email: packaging@punchbowl.co.nz
Phone: Landline: +64 9 215 2692 Mobile: +64 21 199 7375