

STANDARD CONDITIONS OF SERVICE**1. INTERPRETATION**

- 1.1. For the purposes of these standard conditions the following terms shall have the following meanings:
- 1.1.1. **"Company"** means Tiny Keg Canning Co Proprietary Limited (Registration No. 2017/474411/07);
 - 1.1.2. **"Conditions"** mean these standard conditions of service as amended by the Company from time to time in accordance with the provisions of clause 8 below;
 - 1.1.3. **"Customer"** means the customer described in the Order;
 - 1.1.4. **"Customer Manual"** means the customer manual provided by the Company to the Customer incorporating:
 - 1.1.4.1. product and service information;
 - 1.1.4.2. site requirements;
 - 1.1.4.3. pricing principles and guidelines; and
 - 1.1.4.4. other information appertaining to the Service;
 - 1.1.5. **"Equipment"** means the equipment owned or utilised by the Company in the provision of the Service or any aspect thereof, from time to time;
 - 1.1.6. **"Intellectual Property"** means any intellectual property, whether registered or not, of which the Company is the proprietor and which vests in that Party and shall include, but not be limited to, all copyright, trademarks, know-how, goodwill, trade secrets, designs and patents;
 - 1.1.7. **"Invoice"** means the invoice issued by the Company to the Customer in respect of the Service Consideration as provided for in the Job Report, subject to the remaining provisions of these Conditions;
 - 1.1.8. **"Job Card"** means the pre on-site inspection written report describing the provisional ambit and scope of the Service, signed by the Customer;
 - 1.1.9. **"Job Report"** means the post on-site inspection written report containing a final description of the ambit and scope of the Services based on the Job Card and signed by the Customer;
 - 1.1.10. **"Nampak"** means Nampak Limited (Registration No. 1968/008070/06) (including but not limited to its Bevcan Division) which renders services and/or supplies products to the Customer which are ancillary to the provision of the Service by the Company;
 - 1.1.11. **"Nampak Documents"** mean the documents embodying the terms and conditions upon which Nampak agrees and undertakes to render testing and other services and/or to supply products to the Customer as more fully described in the Customer Manual;
 - 1.1.12. **"Order"** means an order for the Service placed by a Customer with the Company as specified in the relevant Job Card and Quotation, signed by the Customer;

- 1.1.13. **"Parties"** mean the parties to the Service Agreement, namely the Company and the Customer and the term "Party" shall mean either of them, depending on the context in which it is used;
 - 1.1.14. **"Personnel"** means, in relation to either Party, its officers, employees, agents and/or other contractors (save as expressly provided to the contrary in these Conditions);
 - 1.1.15. **"Prime Rate"** means the rate of interest per annum which is equal to the Company's banker's publicly quoted basic rate per annum applicable from time to time, calculated daily and compounded monthly in arrears on the basis of a 365 day year (irrespective of whether the year is a leap year), charged by the said bank on the unsecured overdrawn current account of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, acting as an expert and not as an arbitrator, whose appointment need not be proved, and whose decision shall, save in the event of manifest error, be final and binding upon the Parties);
 - 1.1.16. **"Quotation"** means the written quotation in respect of the Service Consideration provided by the Company in respect of the Job Card in question, which is subject to amendment in accordance with the provisions of clause 4 below;
 - 1.1.17. **"Service"** means the filling, canning and/or related services (including seaming, labelling and/or the supply of packaging materials) to be rendered by the Company to the Customer as more fully described in the Order;
 - 1.1.18. **"Service Agreement"** means the agreement of service concluded between the Company and the Customer embodied in the Job Card and the Job Report read together with these Conditions;;
 - 1.1.19. **"Service Consideration"** means the consideration payable by the Customer to the Company for the provision of the Service as specified in the relevant Invoice;
 - 1.1.20. **"Sub-contractor"** means any sub-contractor appointed by the Company relating to the provision of the Service [as provided for in the Order] as notified by the Company to the Customer in writing;
 - 1.1.21. **"Supplier"** means any supplier of products or services appointed by the Company relating to the provision of the Service [as provided for in the Order] as notified by the Company to the Customer in writing; and
 - 1.1.22. **"Website"** means the Company's website, from time to time, currently <https://tinykeg.com/>.
- 1.2. Words importing the singular shall include the plural and *vice versa*, and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate.
 - 1.3. The head notes to the paragraphs to these Conditions are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
 - 1.4. These Conditions shall be binding on and enforceable by the trustees, permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they had signed these Conditions in the first instance and reference to any Party shall be deemed to include such Party's trustees, permitted assigns, liquidators or other legal successors, as the case may be.

2. **THESE CONDITIONS PREVAIL**

- 2.1. These Conditions shall regulate the rights and obligations of the Parties in respect of the provision of the Service.
- 2.2. These Conditions constitute the whole agreement between the Customer and the Company relating to the provision of the Service and no variation hereof shall be of any force or effect unless reduced to writing and signed by the Parties.
- 2.3. The Company shall not be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein.
- 2.4. No indulgence granted by the Company to the Customer under these Conditions shall detract from the rights and remedies of the Company hereunder.

3. **CUSTOMER MANUAL**

- 3.1. The Customer warrants, agrees and undertakes to and in favour of the Company that it:
 - 3.1.1. is familiar with the provisions of the Customer Manual (including but not limited to the Nampak Documents); and
 - 3.1.2. has provided all documents and information required of it under the Customer Manual accurately and comprehensively.
- 3.2. The Company shall be entitled to amend the Customer Manual on its Website www.tinykeg.co from time to time and/or on written notice to the Customer to such effect provided that no such amendment shall affect any Service Agreement then in force.
- 3.3. The Customer Manual shall form part of and be incorporated in these Conditions as if expressly incorporated herein. In the event of a conflict between the provisions of the Customer Manual and these Conditions, these Conditions shall take precedence.
- 3.4. The Customer indemnifies the Company and holds it harmless against any loss, damage or injury arising out of any breach or failure on the part of the Customer or its personnel to comply with and adhere to the Customer Manual.

4. **BINDING ORDERS**

- 4.1. A binding Order and Service Agreement shall come into force as between the Customer and the Company on written acceptance by the Customer of the Job Card and the Quotation.
- 4.2. Any changes to the ambit and scope of the Service in the Job Card and any amendments to the Quotation shall be recorded in the Job Report and the Invoice, once the Job Report has been finalised by the Company and accepted by the Customer in writing. Any changes to the Quotation shall be determined by the Company in accordance with its pricing policy as contained in the Customer Manual.
- 4.3. Save as expressly provided for in these Conditions any agreement or undertaking by the Company in respect of the provision of the Service or any aspect thereof or any quotation given by the Company shall be indicative only and may be amended or revoked by the Company at any time on written notice to the Customer.
- 4.4. In addition to the Service Consideration (if applicable) the Company shall be entitled to recover from the Customer:
 - 4.4.1. any costs reasonably and necessarily incurred by the Company in anticipation of the provision of the Service as provided for in the Job Card and/or Invoice, if the Customer fails to sign the Job Report for any reason; and

- 4.4.2. the penalty provided for in the Customer Manual if the Customer cancels the Order prior to the commencement of the provision of the Service by the Company.

5. SERVICE CONSIDERATION AND PAYMENT

- 5.1. The Service Consideration shall be paid by the Customer to the Company on the dates specified therefor in the Invoice into the designated bank account of the Company, free of exchange and without deduction or setoff of any nature whatsoever.
- 5.2. Without prejudice to any other rights or remedies of the Company under these Conditions or in law;
 - 5.2.1. interest shall accrue on all or any overdue amounts owing by the Customer to the Company at 3% (three percent) above the Prime Rate reckoned from the due date to actual date of payment;
 - 5.2.2. the Company shall be entitled to suspend the performance of all or any of its obligations in respect of the provision of the Service should any amount payable by the Customer to the Company be overdue for more than 7 (seven) days.
- 5.3. Unless otherwise expressly stated in writing, the Service Consideration is exclusive of value-added tax which shall be for the account of the Customer unless the Customer has given acceptable proof to the Company in writing that the supply is a zero rated supply or an exempt supply. The Customer shall pay or reimburse to the Company the amount of any value-added tax simultaneously with the Service Consideration.
- 5.4. The Company shall be entitled to increase the Service Consideration on written notice to the Customer to such effect commensurate with:
 - 5.4.1. any increases in the cost to the Company of providing the Service arising out of any delay in the provision of the Service caused by the Customer; or
 - 5.4.2. any increases in the cost of the provision of the Service (including but not limited to the supply of cans or other products), which cost increases arise in circumstances beyond the reasonable control of the Company, on written notice to the Customer to such effect.
- 5.5. Notwithstanding anything to the contrary contained or implied in these Conditions, if the Company incurs any cost or expense or any liability to any Supplier or other party(ies) to any supplier arising out of a request or instruction issued by the Customer to the Company prior to the conclusion of a binding Service Agreement (but excluding any amount arising out of any fault on the part of the Company), the Company shall be entitled to recover such amount from the Customer on written request and the provision of clause 5.2.1 above shall *mutatis mutandis* apply.
- 5.6. It is expressly recorded and agreed that any volume or other discount to which the Company is entitled to from any Supplier or other party arising out of the provision of the Service by the Company to the Customer hereunder shall accrue to and be for the benefit of the Company and the Company shall not be obliged to account to the Customer for the whole or any part thereof.
- 5.7. The Customer agrees to the cancellation policy payable pursuant to the cancellation of the Service by the Customer in accordance with the provisions of the Customer Manual and the provisions of clauses 5.1, 5.2 and 5.3 above shall apply in respect thereof, *mutatis mutandis*.

6. EQUIPMENT

- 6.1. The Customer shall exercise all due care and skill in caring for all or any Equipment brought onto its premises and/or under its control, from time to time and shall be liable to the

Company for any loss or damage thereto arising out of any act or omission by the Customer or its Personnel. The Customer shall, furthermore, follow all of the reasonable and lawful directives of the Company in respect of the storage, maintenance and protection of the Equipment, from time to time.

- 6.2. The Customer shall, furthermore, take all necessary steps to protect the Equipment against any landlord hypothec or any other lien or attachment or encumbrance and shall, furthermore, furnish its landlord(s) with written notification that the Equipment is the property of the Company and that the Customer has no right, title or interest therein.

7. **LIMITATION OF LIABILITY**

- 7.1. Whereas the Company shall exercise reasonable care and diligence in the provision of the Service it will not be liable for malperformance, non-performance or loss or damage arising out of or attributable to any:

7.1.1. breach or failure on the part of the Customer or its Personnel to comply with the provisions of the Customer Manual and/or these Conditions;

7.1.2. condition, limitation or restriction applicable to the provision of the Service disclosed or provided for in the Customer Manual;

7.1.3. other act or omission on the part of the Customer or its Personnel; or

7.1.4. act or omission of any Supplier or Sub-contractor.

- 7.2. The Company's liability to the Customer shall in any event:

7.2.1. be limited to the Service Consideration payable by the Customer to the Company under the Job Report Invoice in question; and

7.2.2. exclude indirect or consequential loss or damage howsoever arising.

- 7.3. Time shall not be of the essence in respect of the provision of any aspect of the Service and time lines provided for in the Job Card shall be indicative only.

- 7.4. The Company gives no warranty and makes no representation in respect of the Service save for warranties and representations expressly provided for in these Conditions. Save as expressly provided in these Conditions, all guarantees, warranties or representations (express or implied) as to quality, fitness, performance or otherwise in relation to the Service are excluded.

- 7.5. The Company shall not, in any event, be liable for any non-performance, loss or damage arising out of or attributable to the Service unless the Customer notifies the Company in writing of such defect within 30 (thirty) days after the rendering of the Service or the aspect thereof, as the case may be.

- 7.6. In addition to any other remedies of the Company, the Company shall be entitled to suspend the performance of its obligations hereunder at any time if any event or happening beyond the Company's control arises, such as non or reduced availability of raw materials, strikes, lock-outs, fire or any act or event which interferes with or prevents the provision of the Service or any material aspect thereof, including but not limited to events of *force majeure*, such as acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, legal and illegal strikes, interruption of transport, lockouts, inability on the part of the Company to obtain the goods from suppliers or contemplated suppliers thereof as a result of *force majeure* of the nature contemplated in this clause, rationing of supplies, flood, storm, fire or (without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of the Company. The Company shall

furthermore be entitled to cancel the Service Agreement if any of these events or happenings extend beyond 60 (sixty) days on written notice to the Customer to such effect.

8. **THESE CONDITIONS**

The Company may, in its sole discretion, change any of these Conditions from time to time on its Website or on written notice to the Customer to such effect, provided that no such change shall have the effect of amending any conditions applicable to an Order unless otherwise agreed between the Parties in writing.

9. **CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

9.1. The Customer shall:

9.1.1. at all times keep confidential any and all materials and information which it may acquire in relation to the business or affairs of the Company, whether pursuant to a Service Agreement or otherwise, (the "**Confidential Information**"), including, without limitation, financial information, and information and materials about the Company's operations, products, strategic and tactical plans;

9.1.2. not use or disclose the Confidential Information except:

9.1.2.1. with the prior written consent of the Company (which consent may be withheld by the Company in its sole discretion); or

9.1.2.2. in accordance with the order of a court of competent jurisdiction.

9.2. The obligations of the Customer contained in clauses 9.1.2.1 and 9.1.2.2 above shall continue without limit in point of time but shall cease to apply to any information coming into the public domain otherwise than by breach by the Customer of its obligations contained in herein.

9.3. The Customer undertakes to the Company that all Confidential Information and any documents or records (including, without limitation, written instructions, drawings, notes or memoranda, relating to the business or affairs of the Company which are made by it or which come into its possession), shall be deemed to be the sole and exclusive property of the Company and shall be surrendered to the Company on demand, and in any event, on the termination of each and every Order.

9.4. The Customer acknowledges and agrees that:

9.4.1. all rights, title and interest in and to the Intellectual Property vests in the Company;

9.4.2. during the currency of the Service Agreement, the Customer shall not acquire any rights of any nature in any of the Intellectual Property and that all rights, title and interest in and to the Intellectual Property shall at all times remain the property of the Company;

9.4.3. immediately upon termination or expiry of the Service Agreement, the Customer shall cease all use of the Intellectual Property and shall return all documents, records and other material relating to or incorporating the Intellectual Property; and

9.4.4. any rights which may, during the currency of the Service Agreement, have vested in the Customer by virtue of the use of the Intellectual Property or as a result of any alterations, additions, translations, adaptations or revisions of or made to the Intellectual Property, is hereby expressly assigned to the Company.

10. **BREACH**

10.1. Should:

10.1.1. any amount owing by the Customer to the Company be overdue for a period exceeding 14 (fourteen) days whether under the Service Agreement or any other contract or for any other reason whatsoever; or

10.1.2. the Customer otherwise be in breach any of the provisions of the Service Agreement or any other contract entered into with the Company,

then, without prejudice to its other remedies under the Service Agreement or in law, the Company shall have the right by notice in writing to the Customer to:

10.1.2.1. cancel the Service Agreement and any other contract between the Company and the Customer;

10.1.2.2. suspend performance of all or any of its obligations under the Service Agreement or any other contract between the Company and the Customer; or

10.1.2.3. demand payment of all amounts owing by the Customer to the Company whether under the Service Agreement or any other contract between the Company and the Customer, whether or not then due and payable and which will immediately become due and payable on such demand.

11. **CESSION AND ASSIGNMENT**

11.1. The Customer shall not be entitled to cede, assign or delegate any of its rights or obligations under the Service Agreement without the prior obtained written consent of the Company.

11.2. The Company shall be entitled to cede, assign or delegate any of its rights or obligations under the Service Agreement to any other party(ies) on written notice to the Customer to such effect.

12. **GOVERNING LAW**

These Conditions shall be governed in all respects by and shall be interpreted in accordance with the laws of South Africa and, subject to clause 13 below, the Parties hereby consent and submit to the non-exclusive jurisdiction of High Court of South Africa, Western Cape Division, Cape Town, for all purposes of and in connection with this Service Agreement.

13. **ARBITRATION**

13.1. Save in respect of those provisions of the Service Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to the Service Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration proceedings in accordance with the rules of the Arbitration Foundation of South Africa (or its successor body).

13.1.1. The arbitration shall be held, as soon as reasonably possible after it has been demanded –

13.1.2. with only the Parties and their legal representatives present; and

13.1.3. at Cape Town, South Africa.

13.2. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.

13.3. Nothing contained or implied in this clause 13 shall restrict the right of either Party to apply to a Court of competent jurisdiction for summary, urgent or default relief.

14. **STIPULATIO ALTERI**

No part of these Conditions shall constitute a contract in favour of any person who is not a Party to the Agreement (*stipulatio alteri*) unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

15. **SEVERABILITY**

15.1. The invalidity or unenforceability of any provision of these Conditions in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction or of any other provision hereof or herein contained and any invalid provision shall be deemed to be severable.

15.2. The Parties shall negotiate in good faith in order to replace the provision declared invalid or unenforceable with a new provision, valid and enforceable, which preserves the original intention of the Parties.