

Terms and Conditions of Sale

1. Definitions

1.1. In these terms and conditions, the following definitions apply unless otherwise stated:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other equivalent legislation in each State or Territory in Australia.

Confidential Information means information, however held or recorded, relating to us, our business or assets including financial or taxation information, information relating to customers or suppliers, present and future business and marketing plans, particulars of employees or contractors, product formulations and manufacturing processes, the terms of the Contract and any other information which we identify as confidential, but excluding information which is available in the public domain (unless that information enters the public domain as a result of a breach of confidence by you).

Contract means the contract for the purchase of Goods consisting of these Terms, any Invoice(s) issued, the Guarantee and Indemnity and any accepted Order for Goods placed by you.

Credit Account means an arrangement (if any) approved (and not cancelled or withdrawn) by us that permits you to pay for Goods within a certain time after delivery in accordance with these Terms.

Defect means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purpose intended for such Goods or which makes the use of the Goods dangerous, but excludes anything which has been disclosed by us as a feature or limitation of the Goods prior to the date of purchase, or any defect, flaw or imperfection that is trivial or insubstantial.

Goods means all products and services agreed to be supplied by us to you from time to time under the Contract.

Guarantee and Indemnity means the Deed of Guarantee and Indemnity executed by you in favour of us securing your obligations under the Contract.

Invoice means a tax invoice issued by us to you setting out the amount payable by you for any Goods purchased under the Contract.

Order means an order for Goods placed by you in accordance with these Terms.

Payment Terms means the period in which payment must be made for the Goods the subject of this Contract as specified in the table above (or as otherwise agreed in writing by us).

PPS Act means the *Personal Property Securities Act 2009* (Cth)

PPSR means the Personal Property Securities Register.

Privacy Policy means any privacy policy published by us, as amended from time to time.

Terms means these terms and conditions of sale.

We or us means Asian Pacific Colorants Pty Ltd (ACN 638 149 194).

You means the customer specified on any Invoice for Goods purchased under the Contract.

2. General

2.1. We, Asian Pacific Colorants Pty Ltd (ACN 638 149 194), agree to supply and you agree to purchase the Goods on the terms and conditions of sale set out in these Terms, unless otherwise agreed in writing.

2.2. These Terms come into effect upon the earlier of placement of any order, delivery or payment by you.

2.3. You acknowledge that you shall be taken to have adopted and accepted the Terms by continuing to place orders for, and accept delivery of, Goods from time to time.

2.4. To the maximum extent permitted by law, and subject to clause 2.5, these Terms:

a) supersede and exclude all previous discussions, representations or arrangements relating to the supply by us to you of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods; and

b) override any other purchase order, statement of work, proposal quote or other document related to the provision of the Goods, including any other terms or conditions of purchase exchanged between the parties.

2.5. In the case of any inconsistency between any other terms agreed by you and us in writing, the terms and conditions set out in these Terms will prevail to the extent of any inconsistency.

3. Price

3.1. Unless otherwise agreed in writing, the price of the Goods will be our current price at the date of delivery (exclusive of GST).

3.2. Any price indication provided by us to you or otherwise made available to you will be subject to alteration in the event that we incur:

a) higher freight, insurance or import charges; or

b) higher foreign exchange costs after the order is placed; or

c) additional costs as a result of your failure to provide us with any relevant information or licences as requested by us within a reasonable time.

We will provide you with notice of any such price increase.

3.3. Forward Exchange Cover, where obtainable, may be purchased on request at your cost if necessary to negate any exchange risk.

3.4. In the event that we provide you with a quoted firm price and no period of effectiveness is specified, the quoted price will remain available for 30 days from the date of the quote and at all times remains subject to increase in accordance with clause 3.2.

- 3.5. Unless otherwise agreed in writing, the price of the Goods is exclusive of GST. If the sale of the Goods is found to constitute a taxable supply, you must pay the GST applicable to that sale upon receipt of a tax invoice from us. If the supply is in Australia, the terms **GST, supply** and **tax invoice** have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 3.6. Subject to these Terms, if you have a Credit Account with us, the Goods supplied to you under the Contract must be paid for, in accordance with the Payment Terms.
- 3.7. If you do not have a Credit Account with us, you must pay any Invoice issued by us in accordance with clause 5 of these Terms.
- 3.8. We may cancel a Credit Account at any time by notice to you.
- 3.9. Unless otherwise agreed in writing, all payments are to be made by cash or electronic funds transfer of cleared funds. If the Invoice is issued in Australia, Goods must be paid for in Australian dollars. If the Invoice is issued in New Zealand, Goods must be paid for in New Zealand dollars.

4. **Orders**

- 4.1. You may submit an Order for Goods in writing to us from time to time. Unless otherwise agreed in writing, we will supply the Goods requested in the Order on the terms and conditions set out in these Terms.
- 4.2. We will confirm receipt of an Order within 2 business days of receiving it, and will notify you whether or not we accept the Order. Once accepted by us, these Terms will apply to the Goods which are the subject of the Order. We may accept any Order in whole or in part.
- 4.3. Once accepted by us, you may not change or cancel the Order without our prior written consent.

5. **Payment of Invoices**

- 5.1. We will issue you an Invoice on delivery of the relevant Goods. Unless otherwise agreed in writing (including where otherwise identified on any Invoice), all Invoices must be paid in accordance with the Payment Terms.
- 5.2. If you fail to pay any Invoice in accordance with clause 5.1 above, we reserve the right to:
 - a) withhold further deliveries or cancel any Order without notice;
 - b) defer supplying you with any Goods; or
 - c) charge you interest on any outstanding owing to us at an annual rate equal to 2% above Westpac Banking Corporation's indicator lending rate applicable at the time the relevant payment became due and payable.
- 5.3. In addition, any failure to pay an Invoice in accordance with clause 5.1 may be treated as a repudiation of the Contract by you.
- 5.4. On the occurrence of any of the following:
 - a) you default on any payment or become unable to pay your debts as and when they fall due;
 - b) you enter into bankruptcy or liquidation, have a receiver or receiver and manager appointed over all or part of your assets, enter into administration or become insolvent;
 - c) you pass a resolution for your winding up or enter into liquidation or have an application for winding up filed against you; or
 - d) you experience any analogous event having substantially similar effect to any of the events specified above, then:
 - e) all outstanding amounts owing to us in respect of any Invoice will become immediately due and payable, irrespective of the due date specified on the relevant Invoice;
 - f) we reserve the right to charge you for any and all expenses incurred by us in order to recover any outstanding amount owed to us pursuant to these Terms; and
 - g) we may exercise our rights as the holder of a security interest in the Goods, in accordance with these Terms.
- 5.5. You must not withhold any payment or make any deduction or set-off in respect of the purchase price of the Goods without our prior written consent.
- 5.6. You will, upon demand, pay to us all moneys (including, but not limited to, solicitors costs, court costs and disbursements) incurred or expended by us in recovering payment of an amount due by you to us.

6. **Delivery and Defects**

- 6.1. The Goods will be delivered by us to the warehouse nominated by you in the Order unless we receive written notice from you that you wish to take delivery of the Goods from our warehouse. We are not a common carrier and in the event of loss or damage to the Goods in transit caused by or resulting from any act, neglect or default attributable to us, our liability to you will be limited to and completely discharged by either the replacement or repair of any Goods so lost or damaged. Any claims against us for such loss or damage must be made within seven (7) days of the date of delivery.
- 6.2. We reserve the right to deliver by instalments and each instalment will be deemed to be sold under a separate contract. Our failure to deliver an instalment will not entitle you to rescind or repudiate the contract governing delivery of that instalment or any other contract you have with us.
- 6.3. We will make all reasonable efforts to have the Goods delivered to you on the date agreed between us as the delivery date but any date named or accepted by us for completion, delivery, despatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract. We will be under no liability whatsoever should delivery not be made on the agreed date.

6.4. You may offer the Goods to us within 21 days of delivery if you no longer require the Goods and the Goods are in the same condition as they were in when delivered. We in our absolute discretion will decide if we will re-take possession of the Goods. You acknowledge that you must pay all expenses associated with this transaction, including freight and insurance costs. If we accept returned Goods, a credit will be provided to you to an amount agreed between the parties.

7. Risk and Title

- 7.1. Unless otherwise agreed in writing, all risk in the Goods shall pass from us to you when the Goods are delivered in accordance with these Terms.
- 7.2. We will retain title to the Goods until the purchase price of the Goods and all other amounts owing by you to us in any capacity have been paid in full.
- 7.3. Until title in the Goods passes to you, you:
- a) must ensure that the Goods are clearly identified and stored separately in such a manner that they are clearly identified as our property at all times;
 - b) must ensure that the Goods are properly stored, protected and readily identifiable;
 - c) must take all possible precautions to ensure that no deterioration occurs in the Goods and must inform us in writing immediately should it so occur;
 - d) must ensure the Goods are insured against fire, accident, theft and other risks as we may require in the name of us and you for our respective rights and interests providing for payment of policy proceeds to us as unpaid or partly paid vendor, and acknowledge that this insurance provision shall apply (without limitation) to all Goods held on consignment by you on your premises;
 - e) must not sell the Goods except in the ordinary course of your business;
 - f) acknowledge that we will retain title to the Goods even in the event that they are repackaged;
 - g) grant us an irrevocable licence to enter any of your premises during normal business hours to repossess the Goods for the purposes of satisfying any outstanding amount owed to us in relation to those Goods; and
 - h) acknowledge that nothing in this clause 7.3 affects our right to sue you for any outstanding amounts owing by you to us in the event that you fail to pay an Invoice within the specified time.
- 7.4. Prior to title in and to the Goods passing to you in accordance with this clause 7, you will be entitled, as our agent, to sell the Goods to a third person, provided that you:
- a) fully account to us for the Purchase Price of the Goods from any proceeds of such sale;
 - b) hold all rights against the purchaser of any such Goods on trust for our sole benefit; and
 - c) assign to us any such rights if required by us.
- For the purpose of this clause, you irrevocably authorise us to give any such purchaser notice of this assignment.

8. PPSA

- 8.1. You acknowledge and agree that:
- a) the arrangements contemplated by the Contract in connection with the supply and sale of the Goods may constitute a commercial consignment (as defined in s 12(3)(b) of the PPS Act) in respect of those Goods;
 - b) by delivering the Goods to you pursuant to the arrangements contemplated by the Contract, we have a security interest, including a purchase money security interest, (as those terms are defined in the PPS Act) in those Goods;
 - c) the Contract constitutes a security agreement for the purposes of the PPS Act; and
 - d) the security interests (including any purchase money security interests) (each as defined in the PPS Act) referred to in the Contract attach to the Goods at the time of their delivery to you.
- 8.2. You agree to do anything that we require (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information), at your own cost, for the purpose of:
- a) ensuring that we maintain a perfected security interest in the Goods;
 - b) enabling us to register our security interests, with the priority we require, and to maintain registration, on the PPSR; and
 - c) enabling us to exercise rights in connection with the security interest, until the purchase price for the Goods and any other outstanding amount owing by you to us in any capacity has been paid in full.
- 8.3. You acknowledge and agree that we may perfect our security interests by lodging a Financing Statement (as defined in the PPS Act) on the PPSR.
- 8.4. To the extent that the law permits:
- a) for the purposes of sections 115(1) and 115(7) of the PPS Act:
 - (i) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
 - (ii) sections 142 and 143 of the PPS Act are excluded;
 - b) for the purpose of section 115(7) of the PPS Act, we need not comply with sections 132 and 137(3) of the PPS Act;
 - c) if the PPS Act is amended after the date of the Contract to permit you or us to agree to not comply with or to exclude other provisions of the PPS Act, we may notify you that any of these provisions is excluded, or that we need not comply with any of these provisions, as notified to you by us; and
 - d) you agree not to exercise your rights to make any request of us under section 275 of the PPS Act, to authorise the disclosure of any information that under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

- 8.5. To the extent permitted by law, you waive:
- a) your right to receive any notice that is required:
 - (i) by any provision of the PPS Act (including a notice of a verification statement); or
 - (ii) any other law before we or any receiver exercise a right, power or remedy; and
 - b) any time period that must otherwise lapse under any law before we or any receiver exercises a right, power or remedy.
 - c) If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is longer).
 - d) Notwithstanding the above, nothing in this clause prohibits us or any receiver from giving notice under the PPS Act or any other law.

9. Exclusions and Limitations to our Liability

- 9.1. We warrant to you:
- a) where we are the manufacturer, that the Goods reasonably comply with our written specifications; or
 - b) where we are not the manufacturer, that the Goods comply with the manufacturer's written specifications.
- 9.2. You warrant that:
- a) you have received adequate information regarding the Goods to ensure their safe use, handling and storage; and
 - b) you will ensure that the Goods are properly used such that they are free from risk to health and safety.
- 9.3. Each party hereby warrants to the other that it has the power and authority to enter into the Contract and be bound by the terms and conditions set out in these Terms.
- 9.4. To the maximum extent permitted by law, all conditions and warranties that are not expressly set out in these Terms are hereby excluded. This does not limit any applicable statutory guarantees provided in Australia under the Australian Consumer Law or any successor legislation.
- 9.5. If the Australian Consumer Law confers certain rights, guarantees or remedies on you which are not able to be excluded, restricted or modified except in limited circumstances, our liability for breach of any such right, guarantee or remedy is limited to (at our election):
- a) replacing the Goods or supplying equivalent Goods;
 - b) repairing the Goods;
 - c) paying the cost of replacing the Goods or of acquiring relevant replacement Goods; or
 - d) paying the cost of having the Goods repaired.
- 9.6. We give all technical advice or assistance entirely at your risk, and on the basis that you will carry out your own determination as to the suitability of the Goods for your application of them. To the maximum extent permitted by law, you hereby acknowledge that you have not relied on any advice, recommendation, information or assistance provided by us in relation to the Goods, their use or application.
- 9.7. You agree and acknowledge that all descriptions of the Goods provided by us are to only enable their identification and do not mean that the sale of the Goods is a sale by description.
- 9.8. To the maximum extent permitted by law and subject to clause 9.4:
- a) our liability for any loss suffered by you in respect of the Goods (including for any delay or failure to supply the Goods) or for breach of these Terms by us is limited to the price paid by you in relation to those Goods; and
 - b) we exclude all liability for indirect or consequential loss relating in any way to the supply of the Goods to you.

10. Obligations and Indemnities

- 10.1. If you resell the Goods, then you and your contractors must:
- a) provide to the purchaser any instructions or information about the use or care of the Goods, information about repairs, and any express warranties intended for the purchaser which are provided by us to you for the purpose of being provided to the purchaser;
 - b) not make any statement or representation about the goods which is not consistent with information provided by us or make any representation on behalf of us;
 - c) not make any misleading or deceptive statements about the Goods or us or which disparages us;
 - d) if you or your contractors also provide related installation or other services, perform those services in accordance with any instructions and guidelines provided by us;
 - e) promptly notify us of any claims that the Goods do not comply with the mandatory guarantees under the Australian Consumer Law or which involve safety issues or serious injury or death, and then co-operate with us in relation to the handling of those claims;
 - f) comply with your obligations under the Australian Consumer Law in relation to mandatory guarantees; and
 - g) not tamper with, alter, obscure or remove any trademarks which appear on the Goods or alter the labels or packaging in which they are intended to be offered to purchasers.
- 10.2. In addition to the above, where we have expressly advised you either verbally or in writing that:
- a) the colour of certain articles or structures that you make with or to which you apply certain Goods may not be retained with age and condition of use; or

b) that fading and/or discolouration may occur over time as a result of the application to or use of the Goods on certain articles or structures, and as a consequence the Goods may be considered actually or aesthetically unfit for the purpose for which they were sold, you must ensure that this advice is promptly communicated to your customers prior to the point of sale.

10.3. In the event that you fail to comply with clause 10.2 or 10.3 above, you must indemnify us for any loss, expense, cost, damage or liability arising from any claim made against us which has occurred in connection with or been caused directly or indirectly by your failure to advise your customers in accordance with clause 10.2 or 10.3.

10.4. You also indemnify us for any claim, loss, expense, cost, damage or liability that we incur as a result of any act of carelessness or negligence on your behalf which occurs in the course of using, applying, processing or reselling the Goods we have supplied to you.

11. Safety

11.1. You hereby warrant that you will comply with all applicable health and safety laws and all of our instructions as to the storage, handling and use of the Goods, and agree to ensure that all warnings supplied by us in respect of the Goods and/or their use are promptly and clearly communicated to all persons who might be at risk from the Goods, including employees, agents, subcontractors, visitors and customers.

11.2. You hereby agree to indemnify us for all liability incurred by us in respect of any claim, loss, expense, cost, damage or liability sustained by us as a direct or indirect result of your failure to comply with the warranty in clause 10.1 above, except where such claim, loss, expense, cost, damage or liability is directly caused by our gross negligence or wilful default.

12. Termination

12.1. Either party may terminate these Terms in any of the following circumstances:

a) the other party enters into bankruptcy, liquidation or other arrangement with its creditors, has a receiver or receiver and manager appointed over all or part of its assets, enters into administration or becomes insolvent; or

b) the other party is materially in breach of its obligations under these Terms or the Contract and does not remedy that breach within 10 days of receiving notice from the other party requiring it to do so.

12.2. Termination by either party in accordance with this clause is without prejudice to that party's other remedies or our right to recover payment from you for any Goods previously supplied by us to you.

12.3. If we terminate these Terms or the Contract in accordance with this clause 12, we may, without prejudice to any of our other rights and remedies, enter into your premises (or any premises of a third party where the Goods are being stored) for the purpose of recovering any Goods to which we hold title.

13. No Export Without Consent

13.1. You must only sell or use the Goods in the jurisdiction in which they were sold to you.

14. Packages, Pallets and Containers

14.1. Unless otherwise stated, no containers are to be returned to us by you and your property. Where it is stated in the Invoice that the containers are returnable to us, the property in the containers remains with us and you must return the said containers to us as quickly as possible following the delivery of the Goods and in any case within 30 days of delivery.

14.2. We will charge you a deposit for any Goods provided to you with reusable packaging. Any such deposit will be added to the Invoice and a credit will be made in respect of the deposit to you when the containers are returned in good order and condition to the location nominated by us.

14.3. You must not use the containers for any other commodity than that contained in it at the time of delivery.

14.4. At all times we retain the right of possession of any pallets used for delivery of the Goods and you indemnify us for the full price of any new pallets in respect of any pallets not returned or exchanged in good order and condition to us within thirty (30) days of delivery of the Goods.

15. Intellectual Property and Confidentiality

15.1. You agree and acknowledge that all intellectual property rights subsisting in our trade marks, copyright, drawings, specifications or other technical information in respect of the Goods remains our property and that you must not use, remove, interfere with or alter any of the intellectual property in any way.

15.2. To the maximum extent permitted by law, we hereby exclude all representations, warranties and guarantees that the Goods will not infringe the intellectual property rights of any other person and any liability for any claim, loss, damages or costs that you may incur as a result of such infringement.

15.3. You agree to notify us immediately upon becoming aware of any claim by a third party alleging that it is the owner of any intellectual property rights relating to the Goods and we shall be entitled to direct or control any associated proceeding in our absolute discretion.

15.4. Neither party may, without the prior written consent of the other:

a) disclose any of the other party's Confidential Information to any other person; or

b) use any Confidential Information for any reason other than the furtherance of the business relationship contemplated by the Contract, except where required by law, the rules of a stock exchange or disclosure to that party's legal, financial or other advisers.

16. Privacy

16.1. Where you are an individual, you irrevocably authorise us:

- a) subject to any applicable confidentiality obligations, to obtain from any third-party information in respect of you which we require in connection with our lawful commercial purposes including (without limitation) determining whether to extend credit to you and to verify any such information; and
- b) to provide any such information to any third party in connection with our lawful commercial purposes including (without limitation) determining whether to extend credit to you to verify any such information.

16.2. You acknowledge that you are aware of your rights regarding access to, and correction of, personal information under the Privacy Act 1988 (Cth).

16.3. You acknowledge that you have read and understood the terms of the Privacy Policy.

17. General

17.1. Unless otherwise agreed in writing, you may not assign, transfer, or novate your rights or delegate your obligations under the Contract.

17.2. Any provision of these Terms that is illegal, void or unenforceable will be severed without affecting any other provision of these Terms.

17.3. All our rights, powers, exemptions and remedies under these terms and conditions will remain in full force notwithstanding any neglect, forbearance or delay in enforcement by us. We will not be considered to have waived any condition unless such waiver is in writing executed by an authorised officer. Any written waiver will only apply to the particular transaction, dealing or matter to which it relates.

17.4. We will not be liable to you in the event of any delay or failure to deliver any Goods, or other failure to perform any of our obligations under the Contract, where this is directly or indirectly caused by any event or circumstance beyond our reasonable control including acts of God, floods, storms, natural disasters, acts of war or terrorism, sabotage, acts of government or regulatory authority, strikes or other industrial disputes, court orders, breakdown of equipment or any failure by a supplier to deliver goods to us in a proper manner.

17.5. You agree to notify us at least 14 days before you do any of the following:

- a) if you do not have an Australian ACN or ARBN, you change your name;
- b) if you become trustee of a trust with an Australian ABN or ARSN, or a partner in a partnership with an Australian ABN, other than a trust or partnership referred to in these Terms;
- c) if you are a trustee of a trust without an Australian ABN or ARSN, or a partner in a partnership without an Australian ABN, the trust or partnership acquires such a number; and
- d) if you have an Australian ACN, ARSN or ARBN, you shall notify us as soon as possible after you become aware that the number will change or cease to apply.

18. Governing Law

18.1. These Terms shall be interpreted and governed by the law of Victoria.