

## TERMS AND CONDITIONS OF SALE

*These Terms and Conditions apply to any goods supplied by The Company to The Customer except where they are varied by notice in writing by The Company to The Customer prior to the supply of any goods.*

### 1. DEFINITIONS

In the following Terms and Conditions of Sale the "Company" shall mean The Company selling the goods whose name appears on the first page of this document and its related bodies corporate within the meaning of Section 50 of the Corporations Law and the "Customer" shall mean the entity purchasing the goods the subject of these terms and conditions of sale.

### 2. BINDING TERMS AND CONDITIONS

The "Contract" means any contract between The Company and The Customer for the supply of goods (which contract will include these Terms and Conditions) and must be in writing and accepted by The Company. The only contractual terms which are binding upon The Company are those set forth herein or otherwise agreed to in writing by The Company and those, if any, which are imposed by law and which cannot be excluded by these terms and conditions. These terms and conditions and any contract including them shall be governed by the law of the State or Territory in which the goods are sold and The Company and The Customer submit to the jurisdiction of the Courts of that State or Territory and be held in the capital city of the said state or territory.

### 3. STATUS OF PRICE LIST

The Price List shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

### 4. PRICE CHANGE

The prices shown in the Price List are subject to alteration without notice.

### 5. DELIVERY CHARGES

Delivery charges on orders required by overnight transport air freight or other special delivery shall be for the account of the Customer.

### 6. SUPPLY

A) The Company shall not be obliged to sell goods to the Customer if:

- (i) the Customer defaults in its payment obligations hereunder; and/or
- (ii) the Customer becomes bankrupt or goes into liquidation or goes into voluntary administration or is unable to pay its debts as they fall due.

B) The Company shall not be responsible to the Customer if it is unable to supply any goods due to reasons beyond its reasonable control (including but not limited to acts of God, acts of any government, war or other hostility, national or international disaster, the elements, fire, explosion, flood, power failure, equipment failure, strikes or lockouts, inability to obtain necessary supplies and raw materials, transportation delay inability to obtain government or quasi-government approvals, permits or licences and the like and other "force majeure" occurrences.

C) If the Company is unable to supply the Customer's total order these terms and conditions will apply to the supply of all or part of the order.

### 7. BACK ORDERS

Back orders will be supplied to the Customer at the prices and on the terms and conditions applying at the time the original order is accepted by the Company.

### 8. ACCEPTANCE

The Customer shall inspect the goods forthwith upon delivery and shall within 7 days from the date of delivery give written notice to the Company of any matter or thing by reason whereof the Customer alleges that the goods are not in accordance with the contract. If the Customer fails to give such notice then to the extent permitted by statute the goods shall be deemed to have been accepted by the Customer and the Customer shall pay for the goods in accordance with the provisions hereof.

### 9. PAYMENT TERMS

A) COD Customer Invoices must be paid on/ or prior to delivery.

B) Payment for the goods sold by the Company to Account Customers shall be tendered no later than the expiration of the calendar month following the month of sale.

C) Payment by American Express will incur a 3% administration fee.

### 10. TIMING OF PAYMENT

Payment shall be deemed to have been made:-

A) if cash is tendered – on the date it is tendered; and

B) if a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which such cheque or other negotiable instrument is negotiated and cleared by the Company's bankers.

### 11. SANCTIONS FOR LATE PAYMENT

If the Customer defaults in making payment to the Company in accordance with these terms and conditions the Company may in its absolute discretion:-

A) charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the rate 1.5% per month from the date on which such default arose; and

B) require the Customer to reimburse the Company for all collection costs incurred by the Company calculated on a solicitor and own client basis as a consequence of the Company instructing its solicitor to provide advice to it in connection with each default and/or to institute such recovery process as shall in the absolute discretion of the Company be appropriate in the circumstances.

C) the whole sum then owing by the Customer to the Company for all goods sold by the Company to the Customer, shall immediately become due and payable and the Customer shall not thereafter be entitled to purchase goods on credit from the Company unless the Company has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement, the payment obligations contained herein shall apply.

### 12. APPLICATION OF PAYMENTS

Any payments tendered by the Customer to the Company shall be applied as follows:-

A) firstly as reimbursement for any collection costs incurred by the Company in accordance with Clause 12(b) hereof;

B) secondly in payment of any interest charged to the Customer in accordance with Clause 12(a) hereof; and

C) thirdly in satisfaction or part satisfaction of the oldest portion of the Customer's account.

### 13. RETURNS

All returns of goods must be approved by the Company. Authorised returns must be freight prepaid. The Company will credit returned goods only if they are in saleable condition. The Company reserves the right to charge a handling charge equivalent to 10% of the price of goods returned unless the Customer is a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation.

### 14. RETENTION OF TITLE

A) All the goods delivered to the Customer by the Company remain the property of the Company until all debts owing to the Company by the Customer have been paid, and notwithstanding that payments may be made for the purpose of settlement of specifically designated claims. Until payment of all debts owing as aforesaid, the Customer may sell the goods in the ordinary course of business, as the Company's fiduciary and agent (but the Customer shall not hold itself out as such), and may for the purpose of any such sale part with possession of the goods.

B) These provisions apply notwithstanding any arrangement under which the Company provides credit to the Customer. To the extent there is any inconsistency, these provisions prevail.

C) Until payment of all debts owing to the Company, the Company may, without, prejudice to any of its other rights, without prior notice, re-take and resume possession of any goods which remain the Company's property and, by its servants and agents, enter upon the Customers premises, or any other place where the goods may be, for the purpose if:

i) There is any breach of any contract between the Company the Customer; or

ii) The Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager, or a voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, taken possession of the Customer's undertaking or property or any part thereof; or

iii) The Customer parts with possession of the goods or any of them otherwise than by way of sale to a customer in the ordinary course of business.

D) The Company may recover the price of the goods by such action as it considered appropriate including proceedings to appoint a liquidator to the Customer, if the goods are not paid for within the Company's usual credit terms, or any separate arrangement for credit made by the Company with the Customer, notwithstanding that property in the goods has not passed to the Customer.

E) The Customer acknowledges that the Company has a security interest for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Act") in the goods and any proceeds until title pass to the Customer in accordance with this clause 14. This security interest secures all moneys owing by the Customer to the Company under this contract or otherwise. The Customer acknowledges that each security interest over goods or their proceeds arising under this clause 14 is a "purchase money security interest" under the PPS Act to the extent that it secures payment of the amounts owing in relation to those particular goods. The Customer will do anything reasonably required by the Company to enable the Company to register these security interests, with the priority the Company requires and to maintain those registrations. The security interest arising under this clause 14 attach to the goods when the Customer obtains possession of the goods and the parties confirm they have not agreed that any security interest arising under this clause 14 attaches at any later time.

### 15. RISK AND INSURANCE

Upon delivery to the Customer or into the Customers custody (whichever is the sooner) the goods shall be at the risk of the Customer and the Customer shall, at its own cost, insure the goods (in its name and in the name of the Company) against all risks for which a prudent owner would insure his goods and for their full replacement value. The Customer shall upon request provide a copy of the insurance policy to the Company.

### 16. EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES

The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the goods supplied by it to the Customer and/or in respect of advice, recommendation(s), information or services supplied by it, its employees, servants or agents to the Customer regarding the goods, their use and application are those imposed and required to be binding by statute (including the Trade Practices Act 1974) and to the extent permitted thereby the liability if any of the Company arising from the breach of such conditions or warranties shall, at the Company option, be limited to and completely discharged in the case of the goods by either the

Supply by the Company of equivalent goods or the replacement by the Company of the goods supplied to the Customer and in the case of further advice, recommendation(s), information or services and otherwise by the supplying of the advice, recommendation(s), information or services again and otherwise all other conditions and warranties be binding whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this clause by binding on the Company are hereby expressly excluded and negated.

Except to the extent provided in this Clause 17 the Company shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person in relation to the goods and/or advice, recommendation(s), information or services and without limiting the generality thereof in particular any loss or damage consequential or otherwise howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind of or in the goods/or advice, recommendation(s), information or services.

### 17. TESTING

All the goods are manufactured from high-grade materials and to rigid specifications, but since the Company has no control over the conditions under which the goods or goods within recommended coating systems are applied, used, stored, transported or handled the Customer is advised to test the goods thoroughly before adapting them to its own use.

### 18. BATCH NUMBER

All of the goods carry on the label or container a batch number. It is acknowledged by the Customer that, should a problem arise during or after application of a good or goods within a coating system which required technical investigation by a Company laboratory, all batch numbers pertaining to each good MUST be provided, together with a description of the good(s) and system(s) used, prior to any laboratory investigation being instigated. Where a batch number cannot be supplied the Company reserves the right to charge a non-refundable laboratory investigation fee of \$500 which fee is payable prior to the commencement of any laboratory work.

It is acknowledged by the Customer that on receipt of a written recommendation and subsequent procedure the onus is on the Customer to apply the goods recommended or goods recommended within a coating system correctly and that such applications are to be in accordance with the Company's technical data sheet and correct coating procedures.

### 19. PRIVACY AUTHORITY

The Customer irrevocably authorises the Company, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Purchaser or any other credit providers (collectively the "information sources") and the Customer hereby authorises the information sources to disclose to the Company such information concerning the Customer which is within their possession and which is requested by the Company.

### 20. VIENNA SALES CONVENTION

The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to goods supplied by the Company to the Customer under any contract nor do any terms or conditions express or implied by the Vienna Sales Convention form part of the contract.