

TERMS OF TRADE

The following terms of trade ("**these Conditions**") apply to and form part of any sale between Australian Tartaric Products Pty Ltd ("ATP") ACN 008 275 554 ABN 92 008 275 554 and the Customer for the sale of the Goods by ATP to the Customer.

These Conditions replace any previous terms and conditions.

1. Definitions and Interpretation

1.1 Where the context permits, the following expressions will have the meanings given to them:

"Business Day"	means any day other than a Saturday, Sunday or a designated Public Holiday in Victoria;
"Customer"	means a party acquiring Goods from ATP;
"Goods"	means products supplied or to be supplied by ATP to the Customer from time to time.
"Intellectual Property Rights"	means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;
"Order"	is a written order to purchase clearly identified Goods (including quantity, specifications and other relevant matters) at a price specified in a Quotation signed by or on behalf of the Customer;
"PPSA"	means the <i>Personal Property Securities Act 2009</i> (Cth); and
"Quotation"	is a quotation as to the price of specified Goods given by ATP to the Customer.

1.2 In the interpretation of these Conditions, unless specified to the contrary:

- (a) time is of the essence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all other genders;
- (d) a reference to a natural person includes a company or other corporate body and vice versa;
- (e) a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- (f) the obligations on the part of a Customer who is a natural person includes his heirs, executors, administrators and assigns; and
- (g) the obligations on the part of a Customer which is a company or other corporate body includes its successors and assigns.

1.3 Any obligation imposed by these Conditions on a Customer comprised of two or more persons (whether natural, corporate or a combination of the two) binds them jointly and each of them severally.

1.4 The Customer may not, without the consent of ATP, raise a set off or counterclaim available to it against ATP in reduction of its liability under these Conditions;

1.5 Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Conditions.

1.6 If the time for performing any obligation under these Conditions expires on a non-Business Day, then time is extended until the next Business Day.

1.7 A waiver by ATP of a default by the Customer under these Conditions will not constitute a waiver of another or continued default of the same nature or any other provision of these Conditions.

1.8 In the event that any or part of these Conditions is held to be unenforceable, the unenforceable part shall be severed and the remainder of these Conditions shall remain in full force and effect.

1.9 These Conditions embody the entire agreement and understanding between the parties concerning its subject matter, and succeeds and cancels all other agreements, understandings and representations concerning the subject matter of these Conditions.

1.10 The Customer acknowledges that no person whether servant or agent of ATP or otherwise has made or given any guarantee, representation, statement or warranty whether verbally or otherwise which have induced the Customer to enter into a contract and the Customer will not make any claim on ATP in respect of any consequential damage or losses purportedly flowing from the breach or non-observance of such guarantee representation, statement or warranty.

1.11 These Conditions can be varied by ATP at any time, provided written notice of the variation is given to the Customer, with such variation to apply to all Orders and Quotations after the date of notification.

1.12 These Conditions are to be governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the state and federal courts located in Victoria.

2. Formation of Contract

- 2.1** Quotations issued by ATP will not constitute an offer to sell specified Goods at specified price, but rather will constitute an invitation to the Customer to make an offer to purchase the specified Goods at the quoted price by placing an Order. A contract for the supply of Goods by ATP to the Customer is formed when ATP accepts an Order.
- 2.2** These Conditions apply to and form part of every contract for the supply of Goods by ATP to the Customer. Orders are only accepted upon and subject to these Conditions. Any qualification, addition, variation or provision which conflicts with these Conditions which appears on the Customer's Order shall not form part of the contract between ATP and the Customer unless such change appears on the face of the order duly accepted by an authorised person of ATP or is otherwise confirmed by ATP in writing.

3. Orders

- 3.1** ATP reserves the right to accept or decline, in whole or in part, any order placed by the Customer.
- 3.2** If an individual product order is less than the minimum order quantity specified on the price list the order will not be accepted.
- 3.3** ATP will place on a pending order file any items temporarily out of stock and supply these items when stock becomes available unless the Customer specifically instructs otherwise before such goods are shipped.
- 3.4** The Customer must obtain all necessary licences and comply with all appropriate Commonwealth or State Acts and Regulations.
- 3.5** Where a contract is conditional on the Customer's approval of a sample provided by ATP there is no express or implied undertaking that the goods will be exactly the same as the sample, although ATP will use its best endeavours to ensure the goods supplied are similar to that of the sample.

4. Pricing

- 4.1** Goods are invoiced at the prices current on the date of delivery.
- 4.2** All prices quoted are in Australian dollars.
- 4.3** All Goods must be paid for by the Customer within 30 days after the date of the invoice for the Goods except where ATP specifies otherwise, in the manner stated in the invoice.
- 4.4** No credit will be granted to the Customer for stock on hand in the event of a price reduction.
- 4.5** Any tax (including GST) or other duty on the production, sale, shipment or supply of any Goods sold by ATP now imposed or hereafter becoming effective shall be added to the price quoted and shall be paid by the Customer to ATP.
- 4.6** Delivery charges will be charged to the Customer by ATP unless otherwise agreed by ATP in writing.
- 4.7** If after acceptance of an Order and up until and including the date of delivery there are increases in the costs incurred by ATP due to fluctuations in the cost of raw materials, the Goods themselves, currency exchange rates, duty rates, freight rates or any other factors beyond the control of ATP, ATP reserves the right to increase the prices to include allowance for such increased costs by notice in writing to the Customer.

5. Delivery

- 5.1** All orders may be collected by the Customer from ATP's premises or delivered to the destination nominated by Customer. Freight costs for destination deliveries will be borne by the Customer.
- 5.2** Non receipt of goods must be notified within 7 days of the date of invoice or advice of dispatch, otherwise, credit for the goods cannot be allowed.
- 5.3** All delivery dates are estimates. ATP will not be liable for any loss or damage which may be suffered by the Customer (including consequential loss or damage) arising out of a delay in the delivery of Goods, a failure to deliver any Goods or from delivery of damaged or defective Goods.
- 5.4** Without limiting the operation of the previous subclause, the Customer must accept and pay the full invoiced costs for the Goods ordered notwithstanding a delay in the delivery of the Goods, a failure to deliver any Goods or delivery of damaged or defective Goods.
- 5.5** ATP reserves the right to deliver any one or more consignments as part delivery with each consignment to be paid for in accordance with these Conditions.
- 5.6** If ATP determines (at its sole discretion) that the delivery contained a shortfall or damaged or defective Goods then ATP will arrange for any missing, damaged or defective items to be dispatched to the Customer.
- 5.7** Risk for any loss or damage to the Goods from whatever cause shall be borne by the Customer from the time the Goods are dispatched or collected by the Customer from ATP's premises.
- 5.8** The Customer will be responsible for and indemnifies ATP for loss or damage to the Goods from the time of delivery.

6. Default

- 6.1** The Customer is in default if:
- it breaches any of these Conditions and either the breach cannot be remedied or, if it can be remedied, fails to remedy it within 7 days after receiving written notice of the breach;
 - it fails to make a payment to ATP by its due date;
 - being a natural person it commits an act of bankruptcy;
 - being a corporation it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets; or
 - it has any execution levied against its property.
- 6.2** In the event of a default, ATP will be entitled, without the obligation to give any notice to the Customer and in addition to any other rights, to:
- payment of interest on all overdue accounts at the rate of 15% per annum, calculated daily and capitalized monthly, for each day that the amount is overdue;

- (b) the commission it may have to pay to any recovery agent arising from such default or in recovering overdue amounts;
- (c) its actual legal costs on an indemnity basis incurred in relation to such default or in recovering overdue amounts or in otherwise seeking compliance with these Conditions;
- (d) immediate payment for Goods, the payment which would otherwise not have been then due and payable;
- (e) forfeit the deposit paid by the Customer;
- (f) disallow any discounts otherwise claimable by the Customer;
- (g) terminate or suspend delivery of any order which is the subject of any other sale between ATP and the Customer; and
- (h) treat the Customer's default as repudiation of any existing contract for the purchase of Goods and recover any unpaid sum plus the interest, recovery agent's, and legal costs referred to in (a), (b) and (c) above from the Customer by way of liquidated damages.

6.3 If this Deed is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a) the parties are immediately released from their obligations under these Conditions except those obligations listed in clauses 5 (Default), 11 (Limitation of Liability and Indemnity), and 12 (Intellectual Property) and any other obligations that, by their nature, survive termination; and
- (b) each party retains the claims it has against the other in respect of prior breaches of these Conditions.

7. Returns

7.1 The Customer must notify ATP of any damage to Goods, defective Goods or short delivery within 24 hours of delivery failing which the Customer will cease to have a claim for the damage, defects or short delivery.

7.2 Goods will not be accepted for return unless accompanied by a duly authorised ATP Return Goods Form. ATP reserves the right to dispose of, without recourse, any goods returned without this form.

7.3 Following receipt of a duly authorised ATP Return Goods Form, a return may be granted by ATP with or without conditions or withheld at ATP's unfettered discretion.

7.4 Goods accepted by ATP for return will be replaced by ATP with equivalent goods.

7.5 Subject to conditions outlined herein, goods will be accepted for return and replacement if they come into any of the following categories:

- (a) Goods which ATP is satisfied were damaged in transit between the ATP warehouse and delivery dock of the Customer or railhead, local freight depot, or destination nominated by the Customer as applicable in such instances, ATP must be notified by the Customer no later than 7 days after the receipt of the consignment and the Customer should also indicate on the carrier's consignment docket that good are "damaged" or "subject to check" or no claim will be granted;
- (b) Incorrect supply, that is in excess, the wrong goods, etc; and
- (c) Goods which ATP is satisfied are faulty in materials or workmanship.

7.6 Without limiting the other provisions of this Clause 6, the following goods will NOT be accepted for return:

- (a) Goods sold on a non-return basis;
- (b) Goods having a broken seal or label removed; and
- (c) Non-standard or specially manufactured or labelled Goods.

7.7 It is the responsibility of the Customer to ship such goods approved by an ATP representative to the ATP warehouse from which the goods were originally dispatched.

7.8 Without limiting the previous subclause, ATP may impose an administrative charge or surcharge on any return and provide a refund in the form of a credit against future orders or may replace the Goods as it determines, solely at its discretion.

7.9 ATP may in its absolute discretion require the Customer to pay any charge, levy or tax associated with the return of Goods including, but not limited to, freight costs.

8. Title and Property in Goods

8.1 Title to and ownership of and property in the Goods shall pass to the Customer only upon ATP receiving payment in clear funds of the full purchase price and any freight charges, taxes and interest or other monies due and while the Goods remain the property of ATP the Customer holds them on trust for ATP. The Customer shall store or keep them in a manner which clearly identifies them as the property of ATP and shall not dispose of, consume or waste the goods until they are fully paid for, without the consent in writing of ATP.

8.2 If the Customer defaults under these Conditions, all of the Customer's rights, including the right to be paid any money, under any contract pursuant to which the Customer has hired, sold or otherwise provided the Goods or any part of them, whether separately or together with other things, to third parties are automatically assigned to ATP with effect from the date of the default, but only to the extent necessary to enable ATP to recover the amount owed to it by the Customer.

8.3 Until the Customer pays all amounts it owes to ATP:

- (a) the Customer must keep all Goods insured against theft, damage and destruction on behalf of ATP (and if the Customer fails to insure the Goods ATP may do so and invoice the Customer for the cost of insurance);
- (b) ATP may enter premises where the Goods are stored to inspect them on reasonable notice; and
- (c) the Customer acknowledges that it holds the Goods as a bailee on behalf of ATP.

8.4 The Customer may on-sell the Goods prior to payment in full of the purchase price as agent for ATP provided that the proceeds received from the on-sale are held on trust for ATP until payment in full of the purchase price and are not mixed with other funds of the Customer until the purchase price is paid to ATP. The Customer agrees to indemnify ATP on a full indemnity basis and hold ATP harmless from liability for any loss damage or cost arising from any inaccurate or incomplete representations to third parties.

- 8.5** If any Goods are used in a manufacturing process or mixed with other materials, the Customer must record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately hold that amount on trust for and remit that amount from the proceeds of sale to ATP.
- 8.6** If the Customer does not pay for any Goods on the due date, ATP is irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the Goods are stored at other premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or anyone claiming through the Customer whatsoever.
- 8.7** If any of the Goods are not paid for in full by the due date, the Customer must not allow any person to create, have or acquire any security interest in the Goods.
- 8.8** The Customer acknowledges that ATP holds a security interest capable of registration pursuant to the PPSA in all Goods (including all present and after-acquired Goods which have not been paid for) and in all present and after acquired personal property of the Customer to secure payment of the amount the Customer owes to ATP from time to time. The Customer further acknowledges that the security interest will continue until ATP gives a final release in respect of it.
- 8.9** The Customer acknowledges and agrees that ATP may take all necessary steps to register its security interest under the PPSA, and hereby irrevocably consents to ATP doing so. The Customer further undertakes to promptly provide any information or supply any documentation and do all such things as required by ATP to enable it to perfect its security interest in the Goods in accordance with the PPSA.
- 8.10** The Customer acknowledges that the Goods constitute commercial property and hereby waives its right to receive notification from ATP of the registration of the security interest pursuant to section 157(3) of the PPSA.

9. Pallets

ATP retains the right of possession of any pallets used for the delivery of goods and the Customer agrees to indemnify ATP fully in respect of any pallets not returned in good order or condition to ATP within 28 days of delivery of the goods.

10. Fitness for Purpose

- 10.1** The Customer acknowledges that it has made due inquiry and relies on its own skill and judgment when deciding whether the Goods are fit for purpose.
- 10.2** It is the Customer's responsibility to satisfy itself that Goods are of a description, quality and character suitable for the purpose for which they are purchased and, to the extent permitted by law, ATP shall not be liable in any way for any loss or damage (including direct, indirect or consequential) arising from the failure of the Customer to so satisfy itself.

11. Information and Warranties

- 11.1** All samples, drawings, descriptive matter and specifications issued by ATP are issued or published for illustration only and do not form part of the Quotation or the Order unless specifically referred to therein.
- 11.2** ATP will not be liable for any losses or damage, either directly or indirectly incurred by the use of or in reliance upon the information provided therein or for any errors, omissions or inaccuracies in the information provided.
- 11.3** ATP, if applicable, assigns to the Customer any warranty received from the original manufacturer of the Goods so far as ATP is permitted to do so.

12. Limitation of Liability and Indemnity

- 12.1** Subject to these Conditions, to the extent permitted by law, ATP excludes all statutory or implied conditions and warranties and any other liability it may have to the Customer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.
- 12.2** Subject to these Conditions, to the extent permitted by law, ATP limits its liability under any condition or warranty which cannot be legally excluded in relation to the supply of Goods to whichever of the following it determines at its discretion:
- (a) replacing the goods or supplying equivalent goods again;
 - (b) paying of the cost of replacing the goods or of acquiring equivalent goods again; or
 - (c) repairing the goods or paying the cost of repairing the goods.
- 12.3** The Customer indemnifies ATP against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those arising from any actions, suits, proceedings, claims or demands, made against or suffered by ATP, arising out of ATP supplying the Goods in accordance with these Conditions or arising out of the Customer breaching any of the Customer's obligations (which includes any negligent act or omission by the Customer or its agents) under these Conditions.
- 12.4** Storage of ATP's goods must be in accordance with the requirements stated on each pack.
- 12.5** No action in law or in equity shall be brought by the Customer against ATP unless brought within one year from the date of delivery of the shipment of goods to the Customer or from the date of the alleged breach of contract whichever is the earlier.

13. Intellectual Property

- 13.1** Ownership of all Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods and any related documentation provided to the Customer pursuant to the Order belongs to and will vest in ATP.
- 13.2** Nothing stated in these Conditions shall be construed as an implied or express transfer of the Intellectual Property Rights to the Customer or any other party.
- 13.3** The Customer shall not use any of ATP's Intellectual Property Rights including copyright, trademarks, logos, know-how and any other type of intellectual property belonging to ATP without the prior written consent of ATP.

14. Force Majeure

Without prejudice to any other provision hereof ATP will not be liable for any failure to fulfil any terms of any agreement or inability to supply any Goods if such fulfilment is delayed, hindered or prevented by any circumstances not within ATP's direct control including without limiting the generality of the foregoing strikes or lock-outs, material shortages, ATP's suppliers' failure to supply, labour disputes, war, hostilities or the threat or apprehension thereof or compliance with any order or request of any competent government authority or department or court of law. ATP shall be under no obligation to deliver at any further date any goods not deliver under this Clause 12.