

TERMS & CONDITIONS OF SALE

All orders from The Applicant herein after called The Customer for the supply of goods and/or services from EAP Industrial Coatings Pty Ltd herein after called The Supplier shall be governed by these following conditions. The Terms & Conditions cannot be varied or modified in any way except by written agreement of the parties.

1. PRICING / GST

- a) Prices and GST are those ruling at date of despatch. Prices are subject to change without prior notice. GST will be charged at the statutory rate unless a signed exemption certificate or an official Purchase Order quoting a valid GST Exemption Certificate Number is supplied before each purchase.

2. COD PRICES

- a) From time to time, at our discretion, we may offer discounted products for sale on a COD basis. Where products have been purchased on our "COD rate", these purchases must be paid for prior to despatch or by arrangement to pay our delivery driver upon receipt of goods. If payment is not received prior, or at time of delivery normal retail price will be charged.

3. RETURNS

- a) The Customer must advise The Supplier before returning any goods for credit whether on warranty or for any other reason agreed to by The Supplier. This must be done before the goods are despatched from The Customer's premises. The following conditions apply for the return of goods:
- b) Goods must be in a resalable condition;
 - c) Goods manufactured specifically to The Customer's requirements cannot be returned for credit;
 - d) All freight costs must be paid by The Customer;
 - e) The tax invoice number on which the goods were originally purchased must be quoted;
 - f) Goods will be accepted for credit within 72 hours of receipt of the goods by The Customer if the products or their containers are damaged or otherwise of unsaleable quality; or if EAP Industrial Coatings Pty Ltd delivers excess quantities or incorrect products to The Customer;
 - g) Goods can only be returned after 72 hours with prior authority from EAP Industrial Coatings Pty Ltd goods returned after 72 hours of the tax invoice date will incur a 10% handling charge;

4. WARRANTY

- a) The Supplier's obligation under the warranty is restricted to the replacement of the defective goods following The Supplier's inspection and assessment. The warranty does not cover any labour costs or consequential damages whatsoever. The Supplier will not warranty any goods that have been altered or tampered by any other parties without the written authorisation of The Supplier. All costs incurred in returning these goods for warranty must be paid by The Customer. No claim will be recognised unless original tax invoice number and warranty claim number is quoted.

5. DELIVERY TERMS

- a) All goods will be despatched by our chosen carrier and a delivery charge will be invoiced on each consignment except in the following circumstances:
- b) The Customer has elected their own delivery company / freight forwarder at their expense;
- c) The Customer has received in writing from The Supplier an amendment to this standard condition.

6. PAYMENT TERMS

- a) Payment terms are 30 days Nett from date of statement to approved accounts only, otherwise COD payment will apply.

7. TITLE

- a) The Supplier remains legal and beneficial owner of the goods and each of the goods until payment in full of the purchase price plus any interest. Until payment in full of the purchase price, plus any interest, the goods are entrusted to The Customer as a fiduciary and any sale prior to payment in full of the purchase price plus any interest is made on The Supplier.
- b) If The Customer defaults in the due payment of the purchase price or part of the purchase price of goods, or if The Customer becomes, or in the opinion of The Supplier, is likely to become insolvent or a Receiver or Trustee is appointed to The Customer's property, The Supplier (without prejudice to any of its rights or remedies) can recover possession of or resell the goods or both and may enter upon The Customers premises or any other premises at which the goods are situated for that purpose.
- c) If The Customer receives any proceeds from the sale of the goods from any other party The Customer receives those proceeds on trust for The Supplier to be applied in payment of the purchase price for the goods.
- d) Notwithstanding the provisions of Clause 7, the goods shall remain at the sole risk of The Customer from the time of delivery to The Customer by The Supplier and The Customer agrees and undertakes to insure the goods against all risks for the full replacement value of the goods from the said time of delivery.

8. PERSONAL PROPERTY SECURITIES ACT

a) Acknowledgement of security agreement and security interest

- i. The Customer acknowledges and agrees that:
- ii. The Trading Terms are a security agreement for the purposes of the PPSA
- iii. The Supplier has a security interest in the Goods and in any present or after acquired property that represents Proceeds of the Goods; and
- iv. The security interest secures all amounts owing by The Customer to The Supplier in connection with the relevant Goods under these Trading Terms.

b) Acknowledgement of arrangements for financing statements

The Customer acknowledges and agrees as follows:

- i. Financing statements and financing change statements
The Supplier may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to its security interest in the Goods that may include terms that:
 - Describe The Supplier as the “secured party” and The Customer as the “grantor”;
 - Describe the Goods supplied by The Supplier to The Customer from time to time pursuant to these Trading Terms as collateral in the class of “other goods” (or in such other class as The Supplier may reasonably determine is applicable to the Goods);
 - Specifies that the security interest that The Supplier holds in the collateral is a PMSI in accordance with Item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral: and
 - Specifies that the security interest affects Proceeds and, in particular, all present and after acquired property that represents Proceeds of the Goods.
- ii. Period of Registration
The Supplier may register a financing statement or financing change statement on the PPSA Register for any period that The Supplier determines (in its discretion).
- iii. Payment of fees and costs
Upon request made by The Supplier, The Customer must pay to The Supplier all fees, charges and expenses that The Supplier may reasonably incur in:
 - Preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to The Supplier under the Trading Terms;
 - Maintaining any such registration; or
 - Enforcing any security interest granted to The Supplier under the Trading Terms.
 These fees, charges and expenses may be incurred by or with an agent that acts on behalf of The Supplier.
- iv. When registration is to be effected
The Supplier may register its security interest on the Register at any time so long as The Supplier believes on reasonable grounds that it will become a secured party in relation to the Goods including without limitation when The Customer signs or otherwise adopts or accepts the Contract Terms in a manner proposed by The Supplier.
- v. Attachment
A security interest in the Goods created according to the Trading Terms will attach to the Goods at the time that The Customer obtains possession of them and not at any later time.
- vi. Do all things necessary
The Customer must do anything reasonably required by The Supplier to enable The Company to register the security interest as a PMSI and to maintain that registration.
- vii. Separate financing statement may be registered if required
If The Supplier considers that it has or may have a security interest that is not a PMSI in relation to any Goods, it may register a financing statement in respect of that security interest (and that financing statement may be in addition to a financing statement registered by The Supplier in relation to a PMSI in the same Goods).

c) Confidential Information

- i. The Supplier and The Customer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275(1) of the PPSA except that The Company may disclose that information to an interested person where section 275(7) of the PPSA applies.
- ii. The Customer agrees that it will not authorise the disclosure of any information of the kind described in section 275(1) of the PPSA.

d) Enforcement

If The Customer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply of Goods, The Customer agrees that The Supplier shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize Goods by any method permitted by law. For these purposes, and without limiting any other rights of The Supplier under the PPSA as a secured party, The Customer further agrees:

- i. Upon demand made by The Supplier, to immediately deliver up the Goods to The Supplier
- ii. To irrevocably authorise The Supplier to enter any premises occupied by The Customer in order to search for, retrieve and remove those Goods to which The Supplier has title and which are the subject of a security interest as provided for by these Trading Terms;
- iii. To do all things necessary to immediately facilitate The Supplier’s access to The Customer’s premises and to assist The Supplier to locate and identify the Goods;
- iv. To authorise The Supplier to resell the Goods seized and apply the proceeds of sale in payment of any monies that The Customer owes it;
- v. That in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph (d), the provisions of this paragraph (d) shall prevail.

e) Notices

- i. PPSA Notices
The Customer agrees that The Supplier does not need to give The Customer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.
- ii. Where default
In the event of a default by The Customer in performing of any of its obligations in connection with a supply of Goods under The Trading Terms, The Customer agrees that (as between the parties to the Contract Terms) The Supplier is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

9. INSOLVENCY EVENTS

If The Customer:

- a) Becomes insolvent or bankrupt;
- b) Is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager or an Administrator is appointed with respect to The Customer or any of The Customer’s assets;

- c) Makes an arrangement or composition with the creditors of The Customer or attempts to make such an arrangement or composition;
 - d) Is unable to pay their debts as they fall due;
 - e) Fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
 - f) Ceases business;
 - g) Has execution levied against any of their assets; or
 - h) Has a mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and Manager or Administrator enter or seek to enter into possession of any of its assets, then any monies actually or contingently owing to The Supplier at that time under any contract formed on these Trading Terms (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by The Supplier).
- 10. FORCE MAJEURE**
- a) The Supplier may suspend any or all of its obligations to The Customer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of The Supplier to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of The Supplier (each a Force Majeure Event) and The Supplier is not responsible for any delay, default, loss or damage due to any Force Majeure Event.
 - b) When a Force Majeure Event ceases to affect the performance of any of The Supplier's obligations, The Supplier must lift any suspension of those obligations that it makes under paragraph a).
- 11. INSURANCE AND INTELLECTUAL PROPERTY**
- a) Unless otherwise agreed in writing by The Supplier, The Supplier accepts no responsibility for the Insurance of the Goods or any of The Customer's property or materials.
 - b) Any intellectual Property that is presently existing or which is developed in the future by or for The Supplier in the connection with the supply of its goods (including the Goods) vests in and is owned by The Supplier and The Customer must do all things and sign all documents reasonably required by The Supplier to give effect to this clause.
- 12. CERTIFICATE**
- a) A certificate of The Customer's liability under any contract or contracts formed on these Trading Terms, signed by an officer of The Supplier, is prima facie evidence of The Customer's liability under these Trading Terms as at the date of the certificate.
- 13. TERMINATION**
- a) Either party may terminate the arrangements under these Trading Terms not less than 30 Days notice to the other or immediately by notice to the other party if the other party is subject to an Insolvency Event.
 - b) Upon termination all amounts actually or contingently owing by The Customer to The Supplier are immediately due and payable and The Customer shall immediately on demand deliver up to The Supplier all goods purchased from The Supplier for which it has not paid.
- 14. JURISDICTION**
- a) These Trading Terms are governed by the laws of the State of Victoria.
 - b) The parties submit to the non-exclusive jurisdiction of the Courts of Victoria in relation to any dispute or claim arising under or in connection with the supply of Goods or otherwise concerning these Trading Terms.
- 15. NOTICES**
- a) Any notice required by or contemplated by these Trading Terms must be in writing in the English language.
 - b) Any notice by one party to the other shall be sufficiently served if served:
 - i. Personally;
 - ii. By facsimile transmission to the number specified in the application made to The Supplier by The Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party with a transmission confirmation marked as OK; or
 - iii. By e-mail to the address specified in the application made to The Supplier by The Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or
 - iv. By pre-paid post to the party to be served at the registered office of the party or to the address specified in the application made to The Supplier by The Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, in which case it is taken to be received 3 days after the date of posting.