

TERMS & CONDITIONS OF SALE

1. A contract is formed when TERRA FIRMA INDUSTRIES has received an order and either sends the Purchaser a written acceptance or dispatches the goods pursuant to the order.
2. The price is that quoted by TERRA FIRMA INDUSTRIES in respect of the particular order and not in any brochure or other product information published. Prices are ex-warehouse and are subject to Goods and Services Tax (GST) where applicable. If between the date of the agreement and the date of delivery, the cost to TERRA FIRMA of any goods or their components increase for any reason, TERRA FIRMA reserves the right to amend its prices for any undelivered portion of the order, but the Purchaser shall have the right to cancel any outstanding balance of the order within 7 days from the date of notification of the price amendment. TERRA FIRMA reserves the right to amend its purchase price if additional requests are made by the Purchaser in relation to the goods. Orders and subject to delivery fees where applicable.
3. Dispatch dates will be observed subject to TERRA FIRMA's ability to effect transport by available means.
4. No claims in reference to items covered by the invoice will be recognized unless made in writing, with an invoice number, within 7 days of delivery.
5. Payment is to be made on receipt of goods, or in the case of an approved account, within 30 days following the end of the month in which the invoice is rendered or any other terms applied. If not paid as aforesaid TERRA FIRMA reserves the right to charge interest at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic). Interest:
 - (a) is calculated daily from the due date until the invoice is paid in full; and
 - (b) may be capitalised by TERRA FIRMA on the last day of each month.The Purchaser must pay all costs and expenses (including legal costs and mercantile agents fees) which TERRA FIRMA may incur in attempting to recover the overdue amounts.
6. Whilst every effort is made to ensure the accuracy of the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, technical data sheets, material safety data sheets or other descriptive matter or advice provided by or on behalf of TERRA FIRMA, the Purchaser acknowledges and accepts that this descriptive matter or advice describes the general nature of the Goods only and does not form a part of any order or agreement or amount to a representation or warranty. TERRA FIRMA reserves the right to modify the design of goods without notice.
7. If TERRA FIRMA is to match any shade or colour then, unless specified tolerances have been agreed between the Purchaser and TERRA FIRMA, TERRA FIRMA's normal colour quality standards and tolerances shall apply (as determined by TERRA FIRMA from time to time in its sole discretion).
8. TERRA FIRMA will not be liable for any defect in goods arising from designs, drawings or specifications supplied to TERRA FIRMA by the Purchaser or its agents. TERRA FIRMA reserves the right to make any changes to designs, drawings or specifications supplied by the Purchaser or its agents. TERRA FIRMA does not warrant or guarantee that any goods supplied which are based in whole or in part upon any designs, drawings or specifications supplied by TERRA FIRMA will achieve any standard or performance or be suitable for any specific purpose.
9.
 - (a) All copyright or other intellectual property rights (eg product formulations) in the Goods remain the sole property of TERRA FIRMA. The supply of goods implies a license to the Purchaser to use the goods but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any intellectual property without the prior written consent of TERRA FIRMA.
 - (b) The Purchaser warrants that goods supplied by TERRA FIRMA which are based in whole or in part upon designs, drawings or specifications supplied to TERRA FIRMA by or on behalf of the Purchaser do not infringe any intellectual property rights held by a third party.
 - (c) The Purchaser agrees to indemnify and keep indemnified TERRA FIRMA, its servants and agents against all actions, liabilities, claims, demands, costs, expenses and damages which TERRA FIRMA, its servants and agents may incur, sustain or be subjected to in consequences of it, having at the request of the Purchaser, applied a design or any other markings on the goods.
 - (d) Where the Purchaser provides information regarding goods which are to be used for products which require particular identification pursuant to any law or regulation of a competent Government Authority, compliance with any such law or regulation is the sole responsibility of the Purchaser who agrees to indemnify TERRA FIRMA against all liability, claims, costs and expenses of any nature arising from any infringement or non-compliance. No liability is accepted nor warranty given concerning the readability or suitability of symbols, codes or wording on goods.
10. Unless prevented by statute, all implied terms, conditions and warranties are excluded. TERRA FIRMA guarantees that the products will be free of defects but is not responsible for the use or misuse of the goods or the installations

thereof by the Purchaser or third party. The Purchaser's remedy for any breach of condition warranty or condition of goods shall be limited at the discretion of TERRA FIRMA to the replacement of the goods and shall not include any consequential loss or damages in the event of any defect in or failure of goods. TERRA FIRMA will not be under any liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any technical advice or assistance given or rendered by it, to the customer whether or not in connection with the manufacture, preparation or supply of goods and/or services to the customer, provided that TERRA FIRMA has provided such technical advice or assistance with due care and skill. Any claim for warranty by the Purchaser will be considered only after the Purchaser returns goods with proof of purchase to TERRA FIRMA. Such claims may be subject to TERRA FIRMA and/or TERRA FIRMA's supplier's/manufacturer's discretion and their terms and conditions of warranty.

11. All goods are supplied subject to retention of title. The goods remain the property of TERRA FIRMA until complete payment is received by TERRA FIRMA of all claims due to TERRA FIRMA arising from all business transactions between TERRA FIRMA and the Purchaser. Prior to use or resale of the goods, the Purchaser shall maintain them in an identifiable condition in store or on site. The Purchaser may resell the goods in the ordinary course of business subject to maintaining TERRA FIRMA's rights against the goods and acting as judiciary in recovering payment of the goods and segregating such proceeds for the account of TERRA FIRMA until TERRA FIRMA is paid in full. The Purchaser assigns to TERRA FIRMA any claims or rights against sub Purchasers in order to enable TERRA FIRMA to make full recovery on monies owed to them in respect of the goods. In the event of failure of the Purchaser to pay for the goods or in the event of appointment of a receiver and manager, liquidator, agent in possession or execution or distress, TERRA FIRMA may enter the Purchaser's premises or elsewhere where the goods are stored or installed and recover them, or in the event the goods are not in the original saleable condition, other goods to the value of all outstanding monies, or to appoint an agent in writing to do so and the Purchaser acknowledges and guarantees such right of entry during normal business hours. The purchaser acknowledges and agrees that TERRA FIRMA holds a purchase money security interest for the purpose of the PERSONAL Property Securities Act (2009) (Clth) until full payment has been made for the goods.
12. If the Purchaser:
 - (a) fails to pay for the goods on the due date; or
 - (b) suspends or cancels delivery of the goods without prior written approval of TERRA FIRMA;
 - (c) suffers an Insolvency Event; or
 - (d) otherwise breaches these terms and conditions and fails to rectify such breach within seven (7) days notice then TERRA FIRMA may:
 - (e) terminate the order on notice; and/or
 - (f) sell the goods to a third party.Insolvency Event means, if a Purchaser:
 - (a) informs TERRA FIRMA or its creditors generally, that it is insolvent or unable to proceed with its obligations in accordance with the order, for financial reasons;
 - (b) passes a resolution that it be wound up or allows a winding up order to be made against it (unless such winding up is solely for the purpose of reconstruction or amalgamation, the terms of which have been previously been approved by the other party);
 - (c) becomes insolvent or bankrupt or has a receiving order made against it or enters into a composition or deed of company arrangement with its creditors or any class of them;
 - (d) allows a manager, controller, receiver, liquidator or an administrator to be appointed or carries on business under a manager, controller, receiver or administrator.
13. The Purchaser hereby releases, indemnifies and defends TERRA FIRMA from and against any losses, liabilities, claims and costs caused by or arising out of the way in which they are contained or made in compliance with the Purchaser's designs or specification.
14. TERRA FIRMA will not be responsible for any delay in or failure of performance of supply or delivery caused by circumstances beyond it's control including but not limited to strikes, lock -outs, labour disturbances, Act of Government, riot, civil war, commotion, fire, flood, failure or power supply or similar event and shall not be liable for any consequential loss, damage, expense or claim suffered by the Purchaser or any other party as a result of any such event.
15. TERRA FIRMA may in its absolute discretion accept the return of standard products (but not specified) to the credit of the Purchaser provided that such products are returned to TERRA FIRMA unused and undamaged, and with proof of purchase and the Purchaser agrees to pay all delivery costs associated with the return of said products. No returns of

special products will be accepted and TERRA FIRMA may in its absolute discretion, not accept the return of non-stock quantities or products.

16. To the extent permitted by law, TERRA FIRMA will not be liable for any loss (including consequential loss), damage, deterioration, deficiency, defect or other fault or harm arising from, caused by or concerning the supply of goods by or on behalf of TERRA FIRMA.
17. TERRA FIRMA gives no warranty as to the fitness of the goods for any particular purpose or use and shall have no liability in that regard. Goods supplied under this agreement should only be used after the goods have been properly tested by or on behalf of the Purchaser. The risks involved and any cost of testing the goods will be the Purchaser's responsibility.
18. All costs and expenses incurred by TERRA FIRMA to remedy any breach by the Purchaser of these terms and conditions shall be recoverable from the Purchaser in addition and without prejudice to any other rights, powers and remedies held by TERRA FIRMA.
19. These terms and conditions together with any written confirmation or invoice issued in connection with these terms and conditions constitutes the entire agreement between the parties and all previous dealings, representations and arrangements (including any terms and conditions provided by the purchaser) are hereby expressly excluded.
20. The law of Victoria governs this sale. All disputes arising hereunder will be dealt with in the courts of Victoria and courts hearing appeals therefrom.