

Terms and Conditions governing provision of Products and Services by AP John Coopers

1. Application

- 1.1 When we say "We", "Us", "Our" or "AP John Coopers", we are referring to AP John & Sons Pty Ltd (ABN 68 008 165 286) references to "You", "Your", "Customer" or "Client", refer to the entity that has placed a Purchase Order for Goods with AP John Coopers.
- 1.2 If You have placed a Purchase Order for Goods from AP John Coopers it is understood that You have read and agreed to these terms and conditions (T&C's).
- 1.3 These T&C's can change at any time, by continuing to order Goods from Us, You agree to any changes or revisions to these T&Cs.

2. Orders

- 2.1 A Purchase Order will be deemed as accepted by either AP John Coopers sending a Purchase Order acknowledgment in writing to You or on delivery to You of the ordered Goods.

3. Delivery and Collection

- 3.1 AP John Coopers will deliver Your ordered Goods during ordinary business hours (unless otherwise agreed) to a delivery point nominated by You, or where not specified, to a delivery point at AP John Coopers' discretion.
- 3.2 You warrant and agree that You will provide facilities for the efficient receipt and safe, prompt unloading of the Goods.

4. New Barrel Warranty

- 4.1 A 12 month Warranty applies for all new barrels from date of delivery, subject to correct use in accordance with accepted practice.
- 4.2 Please notify AP John Coopers of any damage or defects detected immediately upon receipt of your barrels.

5. Fees

- 5.1 Prices indicated in any Price List are subject to alteration by AP John Coopers without notice, by continuing to order Goods from AP John Coopers, You agree to any such changes.
- 5.2 Unless otherwise specified to You by AP John Coopers, the price of the Goods shall be the price prevailing at the date a Purchase Order is submitted by You to AP John Coopers.

6. Payment

- 6.1 AP John Coopers will issue you with an invoice once your Purchase Order for Goods has been processed and delivered or in the case of a Stock order upon despatch.
- 6.2 Payment terms for invoices are 30 days from invoice date. Payment is accepted via Cash, Cheque, EFT or Credit Card
- 6.3 AP John Coopers only accept Mastercard and Visa credit card payments. However, this facility will attract a surcharge of 1% per transaction. Surcharge amount may change without warning, in line with current bank fees.
- 6.4 If You fail to make payment of an invoice issued to you by AP John Coopers, time being of the essence, We may take the following action:
 - (a) more than 90 days overdue - we will put your account on hold until all outstanding Fees are collected.
 - (b) more than 120 days overdue - we will send your account to a debt collection agency.

7. Our Intellectual Property

- 7.1 You acknowledge and agree that AP John Coopers shall retain the Intellectual Property Rights in any Goods, product documents or other information provided to You by AP John Coopers under these T&C's.

8. Confidentiality

- 8.1 You must keep all confidential and proprietary information provided or disclosed by AP John Coopers to You confidential and You must ensure that Your employees, agents and/or contractors assume the same obligations.

- 8.2 For the purpose of these T&C's, such information includes, but is not limited to, information relating to AP John Coopers' business affairs, methods of carrying on business and its pricing arrangement (if any) with You.

9. Warranties and Liability

- 9.1 You make the following warranties to AP John Coopers:
 - (a) Where You provide AP John Coopers with any Product Material for the purpose of AP John Coopers developing Your Goods, that You are entitled to use the Product Material and that its use by AP John Coopers will not infringe upon the Intellectual Property Rights or Moral Rights of any third party.
 - (b) AP John Coopers will not be liable to You for damages or any other remedy for failure to perform its obligations under these T&C's due to a Force Majeure Event.
 - (c) That a Force Majeure Event will not relieve You from any obligation to pay for Goods already delivered or capable of delivery to You by AP John Coopers after a Force Majeure Event comes to an end.
 - (d) AP John Coopers will not be liable to You for damages or any other remedy due to delay where AP John Coopers has used its reasonable endeavours to meet any agreed deadlines.
 - (e) That AP John Coopers will not be liable to You for any business interruption, loss of revenue, loss of income, loss of business, loss of profits, loss of opportunity, loss of contracts or any other indirect or consequential loss arising in connection with, or as a result of, the provision of Goods by AP John Coopers to You.
- 9.2 Notwithstanding anything else contained in these T&C's, the maximum liability of AP John Coopers to You whether under contract, at law, in equity or otherwise, is limited to an amount equal to the Fees actually paid by You to AP John Coopers.

10. Indemnity

- 10.1 You shall indemnify AP John Coopers from and against all losses, damages, costs and expenses suffered or incurred by AP John Coopers, and all claims, demands, actions, suits or proceedings made or brought against AP John Coopers arising out of:
 - (a) Your breach of any of the provisions of these T&C's;
 - (b) Your breach of any of the warranties at clause 9 of these T&C's; and/or
 - (c) any loss, damage, or injury, caused by, resulting from or in any way connected with the Goods provided by AP John Coopers to You under Your Agreement with AP John Coopers and howsoever caused.
- 10.2 The indemnity at clause 10.1 does not apply to the extent that any such loss or damage arises from the wilful misconduct of AP John Coopers, or any of its officers, employees or agents.

11. Default

- 11.1 Where You are in default under these T&C's, including where You are made subject to an Insolvency Event, AP John Coopers will be entitled to refuse to supply or deliver further Goods to You until such time as You have remedied the default.
- 11.2 Where You are in default of an obligation in relation to payment, then notwithstanding any other rights and remedies available to AP John Coopers, AP John Coopers will be entitled to:
 - (a) Interest on all overdue amounts, from the date of default to the date of payment, in full, calculated at 10% per annum;
 - (b) the costs to AP John Coopers, on an indemnity basis, of recovering any overdue amounts, including but not limited to legal and/or debt collection costs; and/or
 - (c) terminate or suspend, without incurring any liability to You, any Purchase Order in force between You and AP John Coopers for the supply of Goods, whether under these T&C's or otherwise.

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12 Risk and Title

- 12.1 Risk in the Goods passes to You when the Goods have entered your site.
- 12.2 AP John Coopers is not liable for any theft, damage or loss of Goods once title has passed.

13 Application of the PPSA

- 13.1 In this clause, PPSA means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 13.2 This clause applies to the extent that AP John Coopers interest in any Goods is a security interest.
- 13.3 You acknowledge and agree that AP John Coopers may apply to register a security interest in the Goods at any time before or after delivery of the Goods to you. You waive your rights under section 157 of the PPSA to receive notice of any verification of the registration.
- 13.4 You acknowledge and agree that AP John Coopers shall be entitled to apply amounts it receives from You to amounts owing to it in such order as AP John Coopers chooses.
- 13.5 If you default in the performance of any obligation owed to AP John Coopers under these T&C's or any other agreement for AP John Coopers to supply Goods to You, You acknowledge and agree that AP John Coopers may enforce its security interest in any Goods by exercising all or any of its rights under these T&C's or the PPSA.
- 13.6 To the maximum extent permitted by law, AP John Coopers and You acknowledge and agree that the following provisions of the PPSA do not apply to the enforcement by AP John Coopers of any security interest it has in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

14 Implied Terms

- 14.1 Except for any warranties expressly made in these T&C's, all conditions, warranties, undertakings or representations, express or implied, arising by statutes, general law or otherwise are expressly excluded to the extent permitted by law.

15 Severability

- 15.1 If any provision of these T&C's is wholly or partly invalid or unenforceable in any jurisdiction, that provision will be severed and will not affect the validity or enforceability of the remaining provisions which will continue in full force.

16 GST

- 16.1 If any amounts payable by You are subject to Goods & Services Tax (GST), then You are liable to pay the GST on that amount.

17 Waiver

- 17.1 The failure of a party to at any time to require performance of any obligation under these T&C's is not a waiver of that party's right to assert any remedy for breach of that obligation and at any other time to require performance of that or any other obligation under these T&C's.

18 Inconsistency

- 18.1 Should any inconsistency exist or arise between a provision of these T&C's and a provision of any exhibit, schedule, or other document incorporated by reference, the provisions of these T&C's shall prevail.

19 Notices

- 19.1 Any notices under these T&C's must be in writing which may be given by personal delivery, pre-paid postage or email to the party's business address or registered office.

20 Entire Agreement

- 20.1 Your Agreement with AP John Coopers constitutes the entire agreement between the parties in relation to its subject matter and the parties agree that all prior representations, agreements, statements and understandings, whether verbal or in writing, have not been relied upon and are expressly excluded.

21 No Agency

Nothing in this Agreement constitutes or shall be deemed to constitute a partnership or agency between AP John Coopers and You for any purpose whatsoever and AP John Coopers and You agree and acknowledge that neither AP John Coopers nor You has the authority or power to bind the other or to contract in the name of and create a liability against the other in any way or for any purpose.

22 Jurisdiction

- 22.1 These T&C's are governed by the laws of South Australia and each party submits to the exclusive jurisdiction of the courts of that state and waives any right to any claim of *forum non-conveniens*, inconvenient forum, or transfer or change of venue.

23 Definitions and Interpretation

The following definitions shall apply to these T&C's:

Agreement shall mean a Purchase Order, these T&C's and any other document incorporated by reference.

Fees shall mean any fees payable by You to AP John Coopers in accordance with the terms of a Purchase Order or these T&C's from time to time. Ag.

Goods shall mean the goods, materials, supplies, equipment or other items identified in a Purchase Order.

Force Majeure Event shall mean any event beyond AP John Coopers' control including without limitation an act of god, government interference, trade or industrial disputes, power outage and/or non-delivery or shortage of supplies.

Insolvency Event shall mean in relation to an entity that it is unable to pay its debts as and when they fall due or is subject to a winding up in insolvency application or is placed into liquidation, administration or receivership.

Intellectual Property Rights shall mean the rights in any patents, copyright, designs, trademarks (registered or unregistered), domain names, confidential information and all rights of a similar nature which subsist in Australia or elsewhere whether or not such rights are registrable or capable of being registered.

Moral Rights shall mean the right of integrity of authorship, the right of attribution of authorship of a work and the right not to have the authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

Price List shall mean the price of Goods from time to time as set out on our website or as otherwise provided to You by AP John Coopers at Your request.

Product Material shall mean any artwork, graphics, logos, symbols, information, documents, audio, or other materials in which Intellectual Property Rights subsist, supplied by You to AP John Coopers for the purposes of this Agreement.

Purchase Order shall mean Your request for AP John Coopers to supply You with Goods either in writing by submitting to AP John Coopers a standard form document entitled 'Purchase Order Form' or by placing an order with AP John Coopers either online, via telephone or email.

Third Party Intellectual Property shall mean any material owned by a third party in which Intellectual Property and/or Moral Rights subsist.

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