

# **TERMS AND CONDITIONS OF TRADE**

## **1. Interpretation**

- 1.1 Unless otherwise inconsistent with the context the word "person" shall include a corporation.
- 1.2 "goods" shall include services.
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the Female and neuter gender and vice versa.
- 1.4 "Resene Paints" shall mean Resene Paints (Australia) Limited, its successors and assigns.
- 1.5 "customer" shall mean the person named as "the Applicant" on the credit application annexed hereto.
- 1.6 "PPSA" means the Personal Property Securities Act 2009 (Cth);
- 1.7 "PPSA Law" means:
- a) the PPSA;
  - b) any regulations made at any time under the PPSA;
  - c) any provision of the PPSA or regulations referred to in (b) above;
  - d) any amendment to any of the above, made at any time; or
  - e) any amendment made at any time to any other legislation as consequence of a PPSA Law referred to in (a) to (d) above;
- 1.8 "PPSR" means the Person Property Securities Register as referred to in the PPSA.

## **2. Offer and Acceptance**

- 2.1 Any quotation made by Resene Paints is not an offer to sell or to provide goods. Resene Paints shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by Resene Paints within thirty (30) days of receipt by Resene Paints of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Resene Paints and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Unless otherwise agreed in writing, the price charged for the goods shall be the price determined by Resene and applicable at the time of dispatch.
- 2.3 Any pricing agreement with a customer is subject to change following suitable notice being given by Resene.
- 2.4 The customer must pay Resene any applicable tax (as defined by GST law), and/or any applicable duties, taxes or stamp duty that may apply to the supply of goods.
- 2.5 Insofar as goods or services supplied by Resene Paints are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited:
- a) in the case of goods to any one of the following as determined by Resene:
    - i) the refund of the price paid by the customer for the goods or the issue of a credit note for such amount; or
    - ii) the replacement of the goods or the supply of equivalent goods; or
    - iii) the repair of the goods; or
    - iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
    - v) the payment of the costs of having the goods repaired;
  - b) in the case of services to any one of the following as determined by Resene Paints:
    - i) the supplying of the services again; or
    - ii) the payment of the cost of having the services supplied again.

## **3. Delivery**

- 3.1 Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by Resene Paints in writing providing for liquidated damages for failure to deliver by the quoted date Resene Paints shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of Resene Paints for failure to deliver on or before the quoted date. The customer shall accept and pay for goods if and when tendered notwithstanding any failure by Resene Paints to deliver by the quoted date. Written advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.2 Resene Paints shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Resene Paints or any other party, strike or any other industrial action be it of Resene Paints or other party or any other cause whatsoever.
- 3.3 Resene Paints reserves the right to deliver by installments. If delivery is made by installments the customer shall not be entitled:
- a) to terminate or cancel the contract; or
  - b) to any claim, loss or damage howsoever arising failure by Resene Paints to deliver any installments on or before the quoted date.
- 3.4 It is agreed that Resene Paints shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakage's of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of Resene Paints.
- 3.5 Any quotation containing a provision to supply goods "ex stock" is subject to fulfillment of prior orders at the date of receipt of the customer's order.
- 3.6 Delivery charges on dispatch required by the Customer on 'special arrangements' (ie air freight, overnight) and outside of normal shipping schedules shall be on the account of the customer.

## **4. Payment**

- 4.1 Unless otherwise agreed in writing, payment terms are net cash thirty (30) days from the end of the month in which the goods are invoiced to the customer.
- 4.2 This term as to the payment shall be of the essence of the contract.
- 4.3 Subject to clause 14.6 (c) of the PPSA, any payments tendered by the Customer to Resene shall be applied (if applicable):
- firstly as reimbursement of any outstanding costs associated with Section 9 of this agreement.
  - thence as payment or part payment of the oldest outstanding portion of the Customer's account.

## **5. Title**

- 5.1 Notwithstanding the delivery of the goods or part thereof, the goods remain the sole and absolute property of Resene Paints as full legal and equitable owner until such time as the customer shall have paid Resene Paints the full price together with the full price of any goods then the subject of any other contract with Resene Paints.
- 5.2 The customer acknowledges that he receives possession of and holds goods delivered by Resene Paints solely as bailee for Resene Paints until such time as the full price thereof is paid to Resene Paints together with the full price of any goods then the subject of any other contract with Resene Paints.
- 5.3 Until such time as the customer becomes the owner of the goods, he will:
- a) store them on the premises separately;
  - b) ensure that the goods are kept in good and serviceable condition;
  - c) secure the goods from risk, damage and theft; and
  - d) ensure that any identifying mark or number on any of the goods are not removed, defaced or obliterated: and
  - e) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the customer.

- 5.4 a) Until the goods are paid for in full, Resene Paints authorises the customer to sell the goods as its agent in the ordinary and usual course of the customer's business. However, the customer shall not represent to any third parties that it is acting in any way for Resene Paints. Resene Paints will not be bound by any contracts with third parties to which the customer is a party.
- (b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Resene Paints. The customer shall account to Resene Paints from this fund for the full price of the goods.
- (c) The customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to Resene Paints for the price of the goods.
- (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding-up application presented against it or has a receiver appointed, Resene Paints may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract, suspend or cancel this contract or require payment in cash before or on delivery or tender of goods notwithstanding the terms of payment previously specified, or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 5.5 Unless the customer has paid for any goods and whether or not the due date for payment has passed and in addition to any rights Resene Paints may have under Chapter 4 of the PPSA, at its absolute discretion, Resene Paints is authorised by the customer without notice to the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored) and use reasonable force to take possession of the goods without liability for any trespass, negligence or conversion or payment of any compensation to the customer whatsoever.
- 5.6 On retaking possession of the goods Resene Paints may elect to refund to the customer any part payment that may have been made and to credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.
- 5.7 If there is any inconsistency between Resene Paints' rights and this clause 5.7 and its rights under Chapter 4 of the PPSA, this clause 5.7 prevails and the customer:
- acknowledges and warrants that Resene Paints has a security interest (for the purposes of the PPSA) in the goods and any proceeds described in clause 5.4(b) until title passes to the customer in accordance with this clause 5; and
  - must do anything reasonably required by Resene Paints to enable Resene Paints to register its security interest with the priority that Resene Paints requires and to maintain that registration; and
  - the security interest arising under this clause 5 attaches to the goods when the customer obtains possession of the goods and the parties confirm that they have not agreed that any security interest arising under this clause 5 attached at any time. If title in and to the goods has not passed to the customer in accordance with this clause 5, the customer's implied right to sell the goods shall immediately terminate upon the happening of any of the events stipulated in clause 9.

## **6. Risk**

Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been placed on the vehicle which is to effect delivery from Resene Paints stores or warehouses. The goods shall remain at the customer's risk at all times unless and until Resene Paints retakes possession of the goods pursuant to these terms and conditions.

## **7. Claims and Returns**

- 7.1 Subject to clause 2.2 herein, Resene Paints shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with Resene Paints or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of Resene Paints, its servants or agents.
- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within fourteen (14) days notify Resene Paints in writing of the same.
- 7.3 Resene Paints shall not be liable in any circumstances for any:
- defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Resene Paints) or accident;
  - any transport installation removal, labour or other costs;
  - details in goods not manufactured by it but Resene Paints will endeavour to pass on to the customer the benefit of any claim made by Resene Paints and accepted by the customer and the benefit of any claim made by Resene Paints and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the customer to proceed against Resene Paints pursuant to the Trade Practices Act; and
  - technical advice or assistance given or rendered by it to the customer or not in connection with the manufacture construction or supply of goods for or to the customer.
- 7.4 All return of goods must be approved by Resene. Authorised returns must be freight pre-paid (excluding Product recalls)
- 7.5 All goods returned (excluding Product recalls) must be in saleable condition.
- 7.6 Resene retains the discretionary right to charge a 10% handling fee of saleable goods returned.

## **8. Force Majeure**

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Resene Paints, Resene Paints is unable to perform in whole or in part any obligation under this contract, Resene Paints shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.

## **9. Default**

Upon the occurrence of default by the customer in compliance with the terms herein:

- 9.1 Resene Paints may at its discretion withhold further supplies of goods or cancel the contract, or vary the terms of this contract without prejudice to its rights hereunder **PROVIDED HOWEVER** that Resene Paints may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 9.2 The customer shall pay to Resene Paints interest at the rate of 2% per month on daily balances in respect of any amounts as may from time to time be overdue from the date they fall due until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
- 9.3 Without prejudice to any other right or remedy the customer shall indemnify Resene Paints against any costs, fees, charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to Resene Paints on an indemnity basis and all such costs shall be recoverable as a liquidated debt and, at the option of Resene Paints, may be recovered in the Small Debts Court.
- 9.4 The customer shall pay to Resene Paints an administration fee of \$50.00 on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of the loss of Resene Paints in respect of such act of default, however such fee shall not preclude Resene Paints from claiming any higher amount from the customer for any loss occasioned by such act of default.

## **10. Change Of Ownership**

The customer agrees to notify Resene Paints in writing of any change of ownership of the customer or its business, or of directorships in the case of a corporate customer, or of any other change whatsoever affecting this agreement within seven (7) days from the date of such change and indemnifies Resene Paints against any loss or damage incurred by it as a result of the customer's failure to notify Resene Paints of any change.

#### **11. Lien Charge**

- 11.1 The customer hereby acknowledges and agrees that Resene Paints has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal, of the customer in respect of any monies that may hereinafter be owing to Resene Paints under this contract by the customer or otherwise and hereby authorise Resene Paints or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the customer at any time, or to register this charge over assets of the customer with the Australian Securities Commission.

#### **12. Confidentiality**

Subject to section 275(7) of the PPSA Act, neither party will disclose information of the kind mentioned in sections 275 (1) of the PPSA.

#### **13. Enforcement of Security Interest**

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest, created under this contract, the customer agrees that the following provisions of the PPSA will not apply:

- a) section 95 (notice of removal of accession), to the extent that it requires Resene Paints to give a notice to the customer
- b) section 121 (4) (enforcement of liquid assets – notice to Grantor);
- c) section 130 (notice of disposal), to the extent that it requires Resene Paints to give a notice to the customer;
- d) paragraph 132(3)(d) (contents of statement of account after disposal);
- e) subsection 132(4) (statement of account if no disposal);
- f) section 135 (notice of retention)
- g) section 132 (redemption of collateral); and
- h) section 143 (reinstatement of security agreement).

#### **14. Notices under the PPSA Act**

Resene Paints does not need to give the customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

#### **15. Further Assurances**

If at any time:

- a) Resene Paints determines that the PPSA applies, or will at a future date apply, to this contract or any of the transactions contemplated by this contract; and
- b) in the reasonable opinion of Resene Paints, the PPS Law adversely affects or would adversely affect the security position, or the rights of Resene Paints under or in connection with this contract or the goods or compliance with such PPSA Law is necessary or advisable for Resene Paints to maintain a first priority perfected security interest in the goods or any other personal property of the customer under applicable law, then the customer must, upon Resene Paints' request, cause this contract and/or the security interest or ownership interests created under this contract, to be registered with the PPSR in accordance with and to the extent possible under such PPS Law and must cause all other filings and recordings necessary or advisable under such PPS Law and all such other action (including amending this contract) required under such PPS Law to be effected and taken, in order to maintain, protect and perfect the respective right, title and interests of Resene Paints thereunder. All costs and expenses arising as a result of actions taken pursuant to this clause 15 will be for the account of the customer.

#### **16. Jurisdiction**

This contract for the supply of the goods is deemed to have been entered into in the State of Queensland. Any legal action arising out of or in respect of the contract and/or the interpretation thereof shall be brought only in the Courts of Brisbane in the State of Queensland and the customer irrevocably submits itself to the jurisdiction of the Courts of Brisbane in the State of Queensland.

#### **17. Termination**

Notwithstanding that the customer is not in default in compliance with the terms herein, Resene Paints may at any time and at its discretion and upon reasonable notice in writing to the customer decline to make further supplies of goods and/or Resene Paints may cancel the contract without prejudice to any rights arising up to cancellation.