

**TERMS & CONDITIONS OF TRADE**

**1. Definitions**

"**Agreement**" means any agreement or contract entered into for the provision of Products and/or Services by Quantum and the Customer.

"**Terms**" means these Terms and Conditions of Trade;

"**Price**" means the price stated in Quantum's tender, quote, price schedule or letter attached to these Terms which is subject to Clause 3;

"**Customer**" means a person, firm or corporation, jointly and severally if there is more than one, acquiring Products or Services;

"**Products**" means any Products ordered by the Customer, and supplied by Quantum;

"**GST**" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time;

"**Intellectual Property**" means all copyright, patents, trade marks, designs, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registrable or not) owned or licensed by Quantum in respect of the Products or Services;

"**Services**" means any Services supplied by Quantum to the Customer in connection with the Products;

"**Quantum**" means **Quantum Apar Speciality Oils Pty Limited** ACN 003 329 842 of 70 Quantum Close, Quantum Industrial Park, Dandenong South, Victoria 3175 and its permitted successors and assigns; and

**2. Basis of Agreement**

2.1 The Terms apply exclusively to every contract for the sale of Products and/or the supply of Services by Quantum to the Customer and cannot be varied or supplanted by any other conditions without the prior written consent of Quantum.

2.2 Any written quotation provided by Quantum to the Customer concerning the proposed supply of Products or Services is:

- (a) an invitation to treat only;
- (b) remains valid until otherwise advised by Quantum; and
- (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.3 The Agreement is accepted by Quantum when it confirms its acceptance of an offer from the Customer in writing, or provides the Customer with the Products or Services.

2.4 Quantum in its absolute discretion may refuse to accept any offer;

2.5 It is the Customer's responsibility to provide Quantum with its specific requirements in relation to the Products and Services.

2.6 Details contained in any written quotation, tender or letter from Quantum form part of this Agreement, and where inconsistent with the Agreement, the details will prevail.

2.7 Quantum may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of the notice.

**3. Pricing**

3.1 Prices quoted for the supply of Products and Services excludes GST and in addition to payment of the Price for Products, the Customer must pay GST.

3.2 If the Customer requests any variation to the Agreement, Quantum may increase the Price to account for the variation.

3.3 Where there is any change in the costs incurred by Quantum in relation to the Products after the date of order, Quantum may increase its Price for Products on order to take account of any such change, by notifying the Customer.

3.4 Where any delay on the part of the Customer results in an increase in cost to Quantum, the additional cost may be added to the Price.

3.5 If the delivery of Products is delayed or prevented by circumstances caused by the Customer, including that the Customer is not able to accept delivery, the Customer will pay all costs associated with delivery, storage of the Products, insurance, and any costs incurred while making further attempts to deliver the Products.

**4. Payment**

4.1 Unless otherwise agreed, payment for the Products must be made in full on delivery of the Products.

4.2 Unless otherwise agreed, payment for the Services must be made in full on completion of the Services.

4.3 If credit is provided by Quantum, payment must be made within 30 days from the end of the month in which the invoice is dated.

4.4 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.5 Credit terms may be revoked or amended at the sole discretion of Quantum immediately upon giving written notice to the Customer.

4.6 If a Customer's account has not been used for 18 months then that account will be closed without notice. The Customer will be required to open a new account and provide credit credentials

4.7 Quantum will provide a tax invoice for GST purposes.

4.8 Any other payment terms must be agreed in writing and signed by Quantum

**5. Payment Default**

5.1 If the Customer defaults in payment by the due date of any amount payable to Quantum, then all money which would become payable by the Customer to Quantum at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Quantum may, without prejudice to any other remedy available to it:-

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* plus 2 per cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (c) cease or suspend for such period as Quantum thinks fit, the supply of any further Products or Services to the Customer;
- (d) by notice in writing to the Customer, terminate any Agreement with the Customer so far as unperformed by Quantum, without effect on the accrued rights of Quantum under any Agreement.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at Quantum's option:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

**6. Passing of Property**

6.1 Until full payment in cleared funds is received by Quantum for all Products supplied by it to the Customer, as well as all other amounts owing to Quantum by the Customer:-

- (a) title and property in all Products remains vested in Quantum and does not pass to the Customer;
- (b) the Customer must hold the Products as fiduciary bailee and agent for Quantum;
- (c) where practicable the Customer must keep the Products separate from its Products and maintain the labelling and packaging of Quantum ;
- (d) the Customer is required to hold the proceeds of any sale of the Products on trust for Quantum and if the Customer uses the Products for itself or a third party in some manufacturing or other processing, the Customer shall hold such part of the proceeds of such manufacturing or other processing as relates to the Products, on trust for Quantum, and pay such monies to Quantum on demand.
- (e) Quantum may, without notice, enter any premises where it suspects the Products may be and remove them, and for this purpose the Customer irrevocably licences Quantum to enter such premises and also indemnifies Quantum from and against all costs, claims, demands or actions by any party arising from such action.

**7. Risk and Insurance**

7.1 The risk in the Products and all insurance responsibility for theft, damage or otherwise in respect of the Products will pass to the Customer immediately upon delivery of the Products to the Customer.

7.2 If as a result of default by the Customer, the Goods are unable to be delivered the risk in the Products and all insurance for theft, damage or otherwise in respect of the Products will pass to the Customer, from the time of attempted delivery.

**8. Performance of Agreement**

8.1 Any period or date for availability or delivery of Products or provision of Services stated by Quantum is intended as an estimate only and is not a contractual commitment. Quantum will use its best reasonable endeavours to meet any estimated dates for availability or delivery of the Products or completion of the Services.

8.2 Unless expressly stipulated in writing to the contrary, any performance or output figures supplied in respect of Products are estimates.

- 8.3 The Customer may not cancel the Agreement and/or claim damages other than liquidated damages expressly agreed upon in the written quotation, as a result of late delivery or supply.
- 9. Delivery**
- 9.1 The Customer is responsible for organising delivery of the Products from Quantum unless otherwise agreed.
- 9.2 The Customer is responsible for checking all Products to ensure that the correct volume, concentration levels and type of Products have been received. Any shortage, excess or inaccuracy of any of the Products must be reported to Quantum within 7 days of receipt of the Products by the Customer. Quantum will not be responsible for any claim for shortages or failure to meet specifications after this time.
- 9.3 The Customer must provide suitable access to on site tanks, or other suitable receptacles, to allow the unloading of the Products.
- 9.4 The Customer indemnifies Quantum against any loss or damage suffered by Quantum, its sub-contractors or employees as a result of delivery, except where caused by the negligence of Quantum.
- 9.5 Late delivery or supply shall not entitle the Customer to vary or cancel the Agreement, or claim damages as a result.
- 10. Containers**
- 10.1 Subject to clause 10.5, containers in which Products are delivered and for which a separate charge is included in the invoice, (other than a deposit charge), unless otherwise specified, are sold with the Products.
- 10.2 Where 'deposit charge' is included on any invoice, the containers in which products are delivered remain the property of Quantum ("deposit container").
- 10.3 Deposit charges will be refunded in full on receipt of the deposit container by prepaid freight at a Quantum depot within 6 months of the delivery date, provided that the deposit container is in good order and condition.
- 10.4 If deposit containers are not returned in a satisfactory condition, (in Quantum reasonable discretion), such portion of the deposit will be refunded as deemed reasonable by Quantum.
- 10.5 No up-front charges will be made for bulki boxes and specified drums. However, these remain the property of Quantum at all times and must be returned to Quantum within 14 days of any demand being made for their return. Bulki boxes and drums must be returned at the Customer's risk and expense. The Customer bears all risks associated with the bulki boxes and drums until their return to Quantum and indemnifies Quantum against any loss, damage or deterioration. The deemed value of any bulki box or drum is taken to be replacement cost.
- 10.6 If product is delivered to the Customer on a Chep pallet or similar, Quantum will accept a Chep pallet of similar condition in exchange. If an appropriate pallet is not exchanged, the Customer authorises Quantum to advise Chep to debit the Customers account for the number of pallets not exchanged. The Customer must indemnify Quantum for any costs associated with failure to exchange a pallet in accordance with this clause.
- 11. Liability**
- 11.1 Except as specifically contained in this Agreement and in any warranty statement provided with the Products, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.2 Liability arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Products or Services or alternatively the sale, use of, storage or any other dealings with the Products by the Customer or any third party is limited to one of the following as determined by Quantum in its sole discretion;
- the replacement of the Products or the supply of the equivalent Products or re-supply of the Services; or
  - the payment of the cost of replacing the Products or acquiring equivalent Products.
- 11.3 Quantum is not liable for any direct or indirect or consequential losses or expenses suffered by the Customer or any third party, as a result of the provision of the Products, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.4 Quantum will not be liable for any loss or damage suffered by the Customer where Quantum has failed to meet any delivery or availability date or cancels or suspends the supply of Products or Services.
- 11.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of attempting to exclude, restrict or modify the application of any State or Federal legislation applicable to the sale of Products or the provision of Services that cannot be excluded, restricted or modified.
- 12. Cancellation**
- 12.1 If, through circumstances beyond its control, Quantum is unable to effect delivery or provision of Products or Services, then Quantum may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2 Where delivery is delayed due to circumstances beyond the control of Quantum, including but not limited to acts of God, terrorism, strikes, blackouts, fires, storms, or accidents, Quantum may suspend the delivery of the Products until such time as the circumstances preventing delivery cease, and the Customer must allow a reasonable time for delivery following the cessation of the circumstances.
- 12.3 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Quantum, after that order has been accepted by Quantum.
- 12.4 If cancellation occurs under clause 12.1, or if cancellation is accepted by Quantum, the Customer remains liable to Quantum for any costs incurred by Quantum prior to the cancellation of the Agreement.
- 13. Specifications**
- 13.1 All specifications, formulae, drawings, illustrations descriptive matter and particulars contained in Quantum's catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.
- 13.2 The Customer may not reverse engineer any Products provided to it by Quantum.
- 13.3 All drawings, descriptive matter and particulars supplied and remain Quantum's property and are to be returned to Quantum on demand. The Customer shall not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without Quantum's prior consent in writing.
- 14. Intellectual Property**
- 14.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 14.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 14.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 14.4 Any Intellectual Property provided to the Customer by Quantum in connection with the Products remains the exclusive property of Quantum and must be returned to Quantum on demand and must not be copied or communicated to any third party without the express prior written consent of Quantum.
- 14.5 The Customer may not use any trade marks or trade names unless specifically authorised by Quantum.
- 15. Warranty**
- 15.1 Subject to clause 15.3, Quantum will replace if it deems necessary in its reasonable discretion, any Product that does not meet the standard specified in the product description, provided that the Product may have an acceptable variance.
- 15.2 Provision of the Warranty is subject to:
- payment in full in accordance with this Agreement; and
  - written notice from the Customer within 7 days of delivery of any Product that it believes does not meet specifications.
  - independent evidence supplied by the Customer that the Products do not meet specifications; or
  - the provision of a sample of the Products to Quantum for testing.
  - correct storage of the Product in accordance with instructions.
  - decontamination of storage receptacles in accordance with statutory regulations and best practice prior to placing any Product in the receptacle.
  - Using Products in accordance with their intended purpose.
- 15.3 The Warranty excludes damage or alteration to Products arising from circumstances outside the control of Quantum, including, without limitation, mixing of other chemicals or products, or where Products are not used for their intended purpose.
- 15.4 The Customer warrants to use the Products in accordance with;
- any instructions provided to it by Quantum from time to time; and
  - all government and local regulations governing the storage, use and maintenance of the Products.
- 16. Miscellaneous**
- 16.1 The law of Victoria from time to time governs this Agreement and the parties agree to the exclusive jurisdiction of the courts and tribunals of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts and tribunals.
- 17. Privacy**
- 17.1 Quantum is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Quantum in accordance with the *Privacy Act*.
- 17.2 Quantum requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Quantum in connection with this Agreement.