



Global Synthetics

Australian Company – Global Expertise

ABN 71 120 519 520

# TERMS AND CONDITIONS OF TRADE

## GLOBAL SYNTHETICS PTY LTD ACN 120 519 520 & GLOBAL SYNTHETICS QLD PTY LTD ACN 129 502 656 TERMS AND CONDITIONS OF TRADE

1. **Definitions:** "Seller" means the party identified as the 'seller' on the invoice or credit application attached to these terms and conditions (being either of Global Synthetics Qld Pty Ltd ACN 129 502 656 or Global Synthetics Pty Ltd ACN 120 519 520 and its successors and assigns).  
"Buyer" shall mean the Buyer or purchaser (or any entity acting on behalf of the Buyer or purchaser) of the Goods to which these terms and conditions have been issued, its successors and permitted assigns.  
"Goods" shall mean all goods sold by the Seller to the Buyer unless such goods are the subject of a separate written agreement. The Goods and/or Services are as described on invoices, quotations, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.  
"Services" shall mean all Services provided by the Seller to the Buyer and includes any advice or recommendations.  
"Purchase Price" shall mean the amount payable by the Buyer for the Goods as specified by the Seller from time to time in its price lists or separate written offer or quote.  
"Specified Period" means a period of 30 days from the end of the month in which the goods are delivered to the Buyer.  
In this Agreement the following words have the respective meanings given to them in the *Personal Property Security Act 2009 (PPSA)*:
 

(a) financing statements;	(b) proceeds	(c) security interest;
(d) purchase money security interest;	(e) fixtures.	
2. **Orders and Acceptance - Cancellation and Variation**
  - (a) Orders by the Buyer for Goods shall be made in such manner as the Seller shall determine from time to time.
  - (b) Orders shall be deemed to have been accepted by the Seller upon giving written notice of such acceptance to the Buyer or upon delivery of the Goods, whichever shall be the earlier.
  - (c) Once an order has been accepted by the Seller it shall not be cancelled or varied without the prior written consent of the Seller (which may be given or withheld in the absolute discretion of the Seller and if given, subject to such conditions as the Seller shall impose) and in such event the Buyer shall pay (in the case of cancellation) a fee of 20% of the Purchase Price and in the case where Goods have been delivered to the Buyer, upon payment of a fee of 30% of the Purchase Price. All costs of packing, carriage, freight, insurance and duties or taxes relating to delivery to and from the Buyer shall be paid immediately by the Buyer upon receipt of an invoice for same from the Seller.
3. **Payment**
  - (a) The Buyer shall pay the Purchase Price and all other monies owing for the Goods within the Specified Period, unless the Seller shall not have accepted an application for "credit" in which case the Buyer shall pay cash on or before delivery or by such other means as the Seller shall from time to time determine.
  - (b) Where the Buyer does not pay the Purchase Price and all other monies owing for the Goods in full within the Specified Period, the Seller at its sole discretion, shall be entitled to additional interest monies on all monies overdue from the Buyer at the Bank unsecured overdraft rate which is ruling at the end of the Specified Period plus 4%.
  - (c) The Purchase Price quoted from time to time by the Seller does not include GST, packing, freight, transport, insurance, taxes, duties or fees payable in respect of the delivery of the Goods to the Buyer, which may be the subject of additional charges and invoices by the Seller if it so determines in its absolute discretion.
  - (d) In some circumstances, including but not limited to special conditions of the site of delivery, the Seller may, for the well-being of the Goods, determine to pack the Goods in certain ways, and or unload the Goods in certain ways, whereupon the Seller shall be entitled to charge the Buyer for any additional costs incurred by the Seller in so doing.
  - (e) Where delivery of the Goods is made on or with pallets, the Buyer shall be responsible for the safe storage and return of the pallets to the nearest the Seller depot and the Buyer agrees to reimburse the Seller in full for any monies to replace pallets not returned to the Seller within the Specified Period.
  - (f) No discount from the Purchase Price or any other monies owing shall be given to the Buyer unless specifically agreed by the Seller in writing.
- (g) The buyer agrees and accepts that, the buyer is liable for all costs, expenses and disbursements incurred by the seller in pursuing the payment of all outstanding monies owed including but not limited to debt collection agency fees and/or commissions plus any legal costs.
4. **Quotation:** Quotes given by the Seller are based upon specifications and instructions received from the Buyer, upon which the Seller relies. In the event that any such specifications or instructions are incorrect, incomplete or ambiguous, the Seller shall be entitled to amend any relevant quotation given to the Buyer.
5. **Shortages on Delivery:** The Buyer shall notify the Seller of any shortage on delivery within 3 days of delivery of the Goods.
6. **Warranty:** For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods.
7. **Exclusion of Liability**
  - (a) **Important Notice** - no term of this agreement including those immediately following this paragraph shall be construed as excluding or limiting the application of any provision of any statute which may not be excluded, limited or modified, and in particular shall not exclude or limit the applicability of any implied term, warranty or remedy conferred or imposed by the Commonwealth Trade Practices Act or the various State Fair Trading Acts, which may not be so excluded, limited or modified.
  - (b) The Seller shall not be liable for economic or consequential loss or loss of profit.
  - (c) The Seller shall, in the event that Goods are defective because of faulty materials or workmanship:-
    - (i) replace the Goods or supply equivalent Goods;
    - (ii) repair the Goods; or
    - (iii) pay for the cost of repairing the Goods or acquiring replacement Goods, at its option, and its liability shall be limited thereto.
  - (d) The Seller shall not be liable for any loss of or damage to Goods sent by the Buyer to the Seller for replacement or repair. The Buyer shall be responsible for all such transport, freight and insurance costs and arrangements.
8. **Insurance and Risk:** Upon their removal from the premises of the Seller, the Goods shall be at the risk of the Buyer. The Seller may nevertheless take out insurance on the Goods while in transit and the Seller shall be entitled to reimbursement for the cost of any such insurance. If Goods are lost or damaged in transit, the Buyer shall have no claim whatsoever against the Seller.
9. **Retention of title:**
  - (a) The Buyer acknowledges the Seller retains ownership of the Goods until the Purchase Price and all other monies owing on any account by the Buyer to the Seller (Money Owed) have been paid in full, notwithstanding that the Goods may be affixed to, placed or buried in land or soil or be a fixture to land.
  - (b) Once the Buyer takes possession of the Goods:
    - (i) the Buyer must store the Goods separately from other goods of the Buyer, so that the Goods are not mixed with those other goods and in such a way that the Goods are recognisable as the property of the Seller; and
    - (ii) the Goods are at the Buyer's risk and the Buyer must insure the Goods and keep them insured.
  - (c) While the Seller retains title to the Goods:
    - (i) the Buyer must not sell, lease, or otherwise dispose of the Goods; and
    - (ii) the Buyer must not grant, or allow another to hold a security interest in any of the following:
      - (A) the Goods; or
      - (B) the proceeds of the Goods.
  - (d) The Buyer must notify the Seller:
    - (i) promptly of the present location of the Goods when asked to do so by the Seller; and
    - (ii) as soon as the Buyer becomes aware of any of the following:
      - (A) the Goods being located outside Australia; or
      - (B) the Buyer parting with possession of the Goods.



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### SYDNEY

P: (02) 9725 4321

F: (02) 9725 4304

E: [info@globalsynthetics.com.au](mailto:info@globalsynthetics.com.au)

### BRISBANE

P: (07) 3865 7000

F: (07) 3865 4444

### PERTH

P: (08) 9459 4300

F: (08) 9459 4311

### MELBOURNE

P: (03) 9791 1772

F: (03) 9791 1776

### ADELAIDE

P: (08) 8384 8894

F: (08) 8384 3886

[www.globalsynthetics.com.au](http://www.globalsynthetics.com.au)

# TERMS AND CONDITIONS OF TRADE

## 10. PPSA security interest

- (a) Upon agreeing to these terms and conditions in writing, the Buyer acknowledges and agrees that:
- (i) these terms and conditions and any other document that forms part of the Agreement constitute a security agreement for the purposes of the PPSA for all Goods supplied and invoiced to the Buyer by the Seller;
  - (ii) to the extent permitted by law, and for better securing payment of the Money Owing, the Buyer grants a security interest to the Seller in all Goods supplied to the Buyer under these terms and conditions and all personal property previously supplied by the Seller (if any) and all goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties' relationship;
  - (iii) the Buyer will immediately, upon request being made by the Seller, sign all documents and do all things that they may be reasonably required to do to perfect the Seller's security interest in the Goods under the PPSA, including registering a financing statement or financing change statement on the Personal Property Securities Register (PPSR);
  - (iv) the Buyer will indemnify and upon demand reimburse the Seller for all expenses incurred in registering the financing statement or financing change statement on the PPSR;
  - (v) the Buyer will give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name or Buyer's details;
  - (vi) the Buyer will not register a financing change statement or change demand without the prior written consent of the Seller; and
  - (vii) unless otherwise agreed in writing, the Buyer waives its right to receive a verification statement under the PPSA.
- (b) If the Buyer fails to abide by the terms and conditions of this Agreement (including by failing to pay the Money Owing before the Specified Period), becomes insolvent, becomes a bankrupt, enters into, or takes any steps towards entering into, a personal insolvency agreement or debt agreement has a receiver or receiver and manager appointed to it, goes into voluntary administration, is wound-up or discontinues operation, there is a default under this Agreement (**Default**).
- (c) On Default:
- (i) subject to clause 10(c)(iii), the Seller will immediately have the right to take enforcement action under this Agreement, the PPSA and to the maximum extent permissible at law;
  - (ii) upon request, the Buyer must immediately return the Goods on which there is Money Owing;
  - (iii) to the extent that chapter 4 of the PPSA applies to this Agreement, where the Goods are not used predominantly for personal, domestic or household purposes, the parties agree that the following provisions of the PPSA do not apply:
    - (A) section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;
    - (B) section 117 (obligations secured by interests in personal property and land);
    - (C) section 118 (enforcing security interests in accordance with land law decisions)
    - (D) section 121(4) (enforcement of liquid assets);
    - (E) section 125 of the PPSA (obligation to dispose of or retain collateral);
    - (F) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
    - (G) paragraph 132(3)(d) (contents of statement of account after disposal);
    - (H) section 135 (notice of retention);
    - (I) section 142 (redemption of collateral); and
    - (J) section 143 (reinstatement of security agreement);
  - (iv) the Buyer agrees to the extent permitted under the PPSA, that the Buyer has no right under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA;
  - (v) the Seller, its agents and authorised contractors will immediately have the right to enter the Buyer's premises, or any other premises where Goods are located and remove them or seize them by any method permitted by law, without notice to the Buyer, and without being held liable in trespass or liable for any other claim whatsoever related to locating and removing the Goods;
  - (vi) the Seller may demand the immediate payment of the balance of any Money Owing by the Buyer;
  - (vii) the Buyer acknowledges that the security interest created by this Agreement is intended to be a Purchase Money Security Interest (PMSI) to

- the extent that it secures payment of the Purchase Price for the Goods;
- (viii) for the purposes of section 14(6) of the PPSA and to the extent that a security interest created under this Agreement constitutes a PMSI under the PPSA, payments received from the Buyer under this Agreement or in any way connected to this Agreement may be allocated to the Money Owing in any order of priority regardless of the date that the obligation arose (including by firstly applying a payment towards an obligation that is secured or not secured by a PMSI).
  - (ix) in the event of any inconsistency between these terms and conditions and chapter 4 of the PPSA, these terms and conditions apply to the maximum extent possible.

## 11. Confidentiality

- (a) In this clause, PPSA Information means any information or documents (including copies of such documents), which are in existence or may be entered into in the future, of the kind mentioned in section 275(1) PPSA in relation to a security interest in the Goods or the proceeds of the Goods.
- (b) Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or (e) PPSA, provided that where sections 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.
- (c) Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to this Agreement explicitly agrees.

## 12. Intellectual Property

- (a) The Seller shall be and remain the owner of all intellectual property, including any copyright, patent or design rights in any specifications, drawings, sketches or other materials prepared in response to any request for tender or order made by the Buyer.
- (b) All copies of any specifications, drawings, sketches or other materials shall remain the property of the Seller and shall be returned to the Seller by the Buyer on demand.
- (c) The Buyer shall not copy any specifications, drawings, sketches or other materials without the prior written consent of the Seller.
- (d) All catalogues, brochures and other publications supplied by the Seller are copyright and may not be reproduced or used wholly or in part without the prior written consent of the Seller.

## 13. If Buyer is A Trading Trust

In the event that the Buyer is a trustee of any trust, it is hereby agreed that the Buyer enters into this Agreement in its capacity as trustee under the relevant trust to the intent that the obligations contained in this Agreement shall bind the Buyer both personally and in its capacity as trustee of the relevant trust.

## 14. Indemnity

The Buyer indemnifies and will keep the Seller indemnified against any loss arising to or any claims, demands or proceedings made or commenced by any third party caused by the use by the Buyer of any Goods, including but not limited to any injury to or death of any person, or any loss of or damage to any property and including all economic and consequential loss and loss of profit.

## 15. Miscellaneous

- (a) This Agreement shall be created, construed, performed and enforced in accordance with the laws of New South Wales and the parties shall submit to the non exclusive jurisdiction of the courts of that State.
- (b) The Buyer shall pay any stamp duty to which this Agreement may be liable or any other document or notice created pursuant to this Agreement or in respect of the supply of Goods to the Buyer.

## 16. Applications of these Terms

These terms and conditions shall supersede over any terms and conditions previously entered into between the parties and any trading terms submitted by the Buyer.

