

Martogg Group – Terms & Conditions of Trade

1 Definitions: In these Terms and Conditions of Trade:

Agreement: means any Agreement, order, contract or security agreement entered into for the provision of Goods by Martogg to the Customer which will be bound by these Terms;

Terms: means these Terms and Conditions of Trade (and security agreement as defined by the PPSA);

Customer: means a person, firm or corporation, jointly and severally if there is more than one, acquiring Goods from Martogg;

Goods: means goods and services supplied by Martogg to the Customer including if applicable, Packaging;

GST: means the Goods and tax as defined in *A New Tax System (Goods and Tax) Act 1999* as amended;

Intellectual Property: means all copyright, patents, trade marks, designs, formulae, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registerable or not) owned or licensed by Martogg in respect of the Goods;

Martogg: means jointly and severally all legal entities within the Martogg Group who supply Goods in accordance with these Terms including Kantfield Pty Ltd t/as Martogg & Company (ABN 68 006 073 418); or Engineering Compounds & Resins Pty Ltd t/as Encor (ABN 34 005 612 322); or General Polymers (Aust.) Pty Ltd t/as General Polymers (ABN 36 064 184 27); or M.E. Hogg Australia Pty Ltd t/as Gentrade (ABN 99 114 219 082);

Packaging: means re-usable packaging, stillages and pallets;

PPSA: means Personal Property Securities Act 2009.

2 Basis of Agreement

2.1 Unless otherwise agreed by Martogg in writing, the Terms apply exclusively to every agreement entered for the sale of Goods by Martogg to the Customer and cannot be varied or supplanted by any other condition, including the Customer's terms and conditions.

2.2 Any written quotation provided by Martogg to the Customer concerning the proposed supply of Goods is:

- (a) valid for 30 days;
- (b) an invitation to treat only;
- (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.3 The Terms may include additional terms in Martogg's quotation, which are not inconsistent with the Terms.

2.4 The Agreement is accepted by Martogg when Martogg confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the Goods.

2.5 Martogg in its absolute discretion may refuse to accept any offer.

2.6 It is the Customer's responsibility to provide Martogg with its specific requirements in relation to the Goods.

2.7 Martogg 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 notice.

3 Pricing

3.1 Prices and charges, including a Fuel Levy, quoted for the supply of Goods and exclude GST and any other taxes or duties imposed on or in relation to the Goods. In addition to payment of the price of Goods and any other charges, including a Fuel Levy, the Customer must pay any GST and any other taxes, duties or charges imposed on the Goods.

3.2 If the Customer requests any variation to the Agreement, Martogg may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by Martogg in relation to the Goods, Martogg may vary its price for the Goods in order to take account of any such change, by notifying the Customer.

3.4 Martogg may include a Fuel Levy charge or a Carbon Levy charge as components of any invoice to the Customer.

4 Payment

4.1 Unless otherwise agreed in writing:

- (a) payment for the Goods and charges must be made within 30 days of the end of month in which Martogg's invoice is raised.
- (b) Martogg reserves the right to require payment in full on delivery of the Goods.

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

4.3 Payment terms may be revoked or amended at the sole discretion of Martogg immediately upon giving written notice to the Customer.

5 Payment Default

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

- (a) claim a general lien over all the Customer's Goods in the possession of Martogg, and subject to giving 14 days written notice to the Customer, sell the property by private treaty or public auction, whichever Martogg in its sole discretion deems appropriate, and allocate the proceeds to the repayment of its sale costs and expenses and any sum which is due and payable by the Customer;
- (b) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;
- (c) charge the Customer for all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (d) cease or suspend for such period as Martogg thinks fit, supply of any further Goods or to the Customer;
- (e) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Martogg; without effect on the accrued rights of Martogg under any contract.

5.2 Clauses 5.1(d) and 5.1(e) may also be relied upon, at the option of Martogg:

- (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

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- (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 Title

- 6.1 Full legal and equitable title and property in any and all Goods supplied by Martogg to the Customer will remain with Martogg until:
- (a) the Customer has paid Martogg all amounts owing for the Goods under these Terms; and
 - (b) the Customer has paid all other amounts owed to Martogg in respect of all Agreements between Martogg and the Customer;
- 6.2 Receipt by Martogg of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Martogg's ownership of rights in respect of the Goods will continue.
- 6.3 It is further agreed that in addition to any rights Martogg may have under Chapter 4 of the PPSA until payment of all amounts owing by the Customer to Martogg:
- (a) the Customer must hold the Goods as fiduciary bailee and agent for Martogg and keep separate the Goods until Martogg has received payment in full and all other obligations owed by the Customer are met;
 - (b) Martogg may give notice to the Customer to return the Goods or any of them to Martogg. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods will cease;
 - (c) Martogg will have the right to stop the Goods in transit whether or not part or previous delivery has been made;
 - (d) if the Customer fails to return the Goods to Martogg, then without prejudice to any other rights and without prior notice, Martogg or Martogg's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee and licensee of the Customer, where the Goods are situated and take possession of the Goods which remain the property of Martogg pursuant to this Clause 6 and the Customer irrevocably licenses Martogg to enter such premises and indemnifies Martogg from and against all costs, claims, demands or actions by any party arising from such action;
 - (e) the Customer will not deal with any money of Martogg in its possession in any way which may be adverse to Martogg;
 - (f) the Customer will hold any proceeds from its sale or disposal of the Goods on trust for Martogg;
 - (g) the Customer will not encumber or charge the Goods in any way or grant or otherwise give any interest including granting a security interest (as defined by the PPSA) in the Goods while they remain the property of Martogg;
 - (h) then Martogg may issue proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) If the Goods are converted or made part of any end product, or are commingled or are accession Goods for the purposes of the PPSA, the parties agree that Martogg will be the owner of the end product and any proceeds associated with the Goods.

- 6.4 If there is any inconsistency between Martogg's rights under this Clause 6 and its rights under Chapter 4 of the PPSA, this Clause 6 prevails.

7 Risk and Insurance

- 7.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately on the Goods being delivered.
- 7.2 The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.
- 7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods sold by Martogg, whether such Goods are used singularly, or in combination with other substances, or any process.

8 Acknowledgments

- 8.1 The Customer acknowledges that :
- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by Martogg in relation to the Goods their use or application;
 - (b) it has the sole responsibility of satisfying itself that the Goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by Martogg.
- 8.2 Any description of the Goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

9 Performance of Agreement

- 9.1 Any period or date for delivery of Goods stated by Martogg is intended as an estimate only and is not a contractual commitment. Martogg will use its best endeavours to meet any estimated dates for delivery of the Goods but will in under no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of Goods invoiced.

10 Delivery

- 10.1 Martogg will, at its discretion, arrange for the delivery of the Goods to the Customer and shall designate the route and the means of transportation for the delivery of Goods. In the event that the Customer requires a more expensive route and/or means of transportation the Customer will reimburse Martogg for any extra cost involved.
- 10.2 Unless otherwise agreed in writing by Martogg, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of despatch of the Goods to the Customer to the point of delivery.
- 10.3 The Customer must provide reasonable and proper access to the location specified for delivery.
- 10.4 The Customer authorises Martogg to subcontract delivery in its absolute discretion.

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- 10.5 The Customer indemnifies Martogg against any loss or damage suffered by Martogg, its sub-contractors or employees as a result of delivery, except where caused by the negligence of Martogg.
- 10.6 The obligation of Martogg to deliver Goods shall be satisfied by the delivery by Martogg of the quantity of Goods ordered (+/- 10%) or if delivery is by installments, by the delivery of the quantity of Goods to be delivered in each installment (+/- 10%). The Customer shall only be required to pay for the actual quantity of the Goods delivered by Martogg.
- 10.7 If Martogg does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification that the Goods are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges payable monthly on demand.
- 11 Personal Property Securities Act (PPSA)**
- 11.1 The Customer acknowledges and agrees that the PPSA applies to this Agreement.
- 11.2 The Customer grants Martogg a purchase money security interest (PMSI) in all Goods and any proceeds supplied by Martogg to the Customer.
- 11.3 The Customer acknowledges and agrees that the security interest:
- (a) arising under this Agreement will be perfected by Martogg prior to the Customer obtaining possession of the Goods;
 - (b) is a continuing and subsisting interest in the Goods with priority over any other security interest and any unsecured creditor of the Customer;
- 11.4 The Customer will do everything required of it to enable Martogg to register and maintain its security interest with the priority Martogg requires.
- 11.5 Martogg does not need to give the Customer any notice under the PPSA unless the notice is required by the PPSA and that requirement cannot be excluded.
- 11.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under this Agreement, the Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPS Act will not apply.
- 11.7 The Customer agrees not to disclose to an 'Interested person' or any other person, any information of the kind described in section 275(1) of the PPSA.
- 11.8 The Customer must notify Martogg immediately in writing of any changes to its name, address, contact details or data required to register a financing statement under the PPSA.
- 11.9 Until Title in the Goods passes to the Customer, the Customer will keep and maintain all Goods free of any charge, lien or security interest except as created under this Agreement and otherwise deal with the Goods in a way that will prejudice the right of Martogg under this Agreement.
- 11.10 The Customer irrecoverably grants Martogg the right to enter any premises or property of the Customer without notice and without being any way liable to the Customer or any other person, if Martogg has cause to exercise any of its right under the PPSA or these Terms and the Customer agrees to indemnify Martogg against any such liability.
- 12 Packaging**
- 12.1 Packaging in which or on which Goods are delivered remain the property of Martogg (or may be in possession of Martogg under Agreement with third parties) and must not be used for any other Goods than those originally contained in the packaging at the time of delivery. The Customer must return all returnable packaging delivered by Martogg as soon as practicable after the Goods have been removed.
- 12.2 The Customer must compensate Martogg for the replacement costs of any returnable packaging (including stillages and pallets) that is not returned to Martogg or for repair costs of any returnable packaging (including stillages and pallets) that is returned to Martogg in damaged or in poor condition.
- 13 Liability**
- 13.1 Except as specifically set out herein, or contained in any warranty statement provided with the Goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 13.2 Replacement or repair of the Goods or re-supply of the Goods is the absolute limit of Martogg's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.
- 13.3 Martogg is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 13.4 Martogg will not be liable for any loss or damage suffered by the Customer where Martogg has failed to deliver Goods or fails to meet any delivery date or cancels or suspends the supply of Goods.
- 13.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of which cannot be excluded, restricted or modified.
- 14 Cancellation**
- 14.1 If, through circumstances beyond the control of Martogg, Martogg is unable to affect delivery or provision of Goods, then Martogg may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 14.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Martogg after that order has been accepted.
- 14.3 Martogg, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.
- 15 Specifications**

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15.1 All specifications, formulae, drawings, illustrations descriptive matter and particulars contained in Martogg'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.

15.2 The Customer must not reverse engineer any Goods provided to it by Martogg.

15.3 All drawings, descriptive matter and particulars supplied, remain Martogg's property and are to be returned to Martogg on demand.

The Customer must 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 Martogg's prior consent in writing.

16 Intellectual Property

16.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

16.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part 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.

16.3 The Customer must not at any time create, sell, manufacture or process any Goods using or taking advantage of the Intellectual Property.

16.4 The Customer warrants that, where it provides materials for use by Martogg or provides manufacturing directions, it is legally entitled to do so.

16.5 The Customer indemnifies and agrees to keep indemnified Martogg against all liability, losses or expenses incurred by Martogg in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights in relation to the Customer's manufacturing directions or material provided by the Customer for the manufacture or supply of the Goods.

16.6 Any Intellectual Property provided to the Customer by Martogg in connection with the Goods and remains the exclusive property of Martogg and must be returned to Martogg on demand and must not be copied or communicated to any third party without the express written consent of Martogg.

17 Warranty

17.1 Subject to Clause 16.3, Martogg, in its reasonable discretion if it deems necessary will replace any Goods or re-supply any Goods that do not meet the standard specified in the product description, provided that the Goods may have an acceptable variance.

17.2 Provision of the Warranty is subject to:

(a) payment in full in accordance with this or any Agreement;

(b) written notice from the Customer within 14 days of delivery of any Goods that it believes does not meet specifications or Goods that are defective;

(c) the provision of a sample of the Goods to Martogg for testing;

(d) correct storage of the Goods in accordance with instructions; and

(e) using the Goods in accordance with their intended purpose.

17.3 The Warranty excludes damage or alteration to the Goods arising from circumstances outside the control of Martogg, including, without limitation to where the Goods are not used for their intended purpose, or where Goods or any part of them have been treated, processed or changed in any manner.

17.4 The Customer warrants to use the Goods in accordance with:

(a) any instructions provided to it by Martogg from time to time;

(b) all government and local regulations, including but not limited to all relevant environmental laws and regulations governing the storage, use, handling and maintenance of the Goods;

(c) all necessary and appropriate precautions and safety measures relating to the storage, use, handling and maintenance of the Goods.

18 Miscellaneous

18.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

18.2 Failure by Martogg to enforce any of these Terms shall not be construed as a waiver of any of Martogg's rights.

18.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.

18.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee.

Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.

19 Privacy

19.1 Martogg 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 Martogg in accordance with the Privacy Act.

19.2 Martogg requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Martogg in connection with this Agreement.