

# ACTIVATED CARBON TECHNOLOGIES PTY LTD (“ACT”)

## TERMS & CONDITIONS OF TRADE

### 1 Terms & Conditions

These terms & conditions replace all previous terms & conditions between ACT and the Customer.

### 2 Definitions

In these terms & conditions the following definitions apply:

“**Consumer**” has the meaning given to it in Section 3 of the Australian Consumer Law;

“**Contract**” means and includes these terms & conditions, any account application form, any invoice and any supply docket;

“**Customer**” means the purchaser of goods or services from ACT whether an individual or a corporation;

“**Goods**” means all products and services supplied by ACT to the Consumer from time to time;

“**Guarantor**” means any director of an incorporated Customer;

“**PPSA**” means the Personal Property Securities Act 2009 (Commonwealth);

“**PPSA Law**” means:

- a) the PPSA;
- b) any regulations issued from time to time pursuant to the PPSA;
- c) any amendment to the PPSA or regulations made from time to time.

“**PRODUCT**” means Activated Carbon.

“**PURCHASE ORDER**” means a purchase order placed by the customer with ACT for the purchase and delivery of product by ACT to the customer.

“**Activated Carbon Technologies Pty Ltd**” means Activated Carbon Technologies Pty Ltd and any associated corporation within the meaning of the Corporations Act.

### **3 Payment Terms**

- 3.1 At the discretion of ACT payment for goods will be within 30 days from the end of the month of delivery of the product.
- 3.2 If payment is not made on or before the due date ACT may elect to charge an administration fee for late payment of 6% per annum in respect to the amount unpaid from time to time, and calculated on daily balances. The parties agree that this charge represents an actual estimate of loss and cost to ACT as a result of late payment.
- 3.3 If payment is not made on or behalf a due date then ACT may, at its sole discretion and without the need for written notice, refuse to supply further goods to the customer.
- 3.4 The Customer is not permitted to offset any amount that it claims may be due to it by ACT as against any amount payable by the Customer to ACT from time to time.
- 3.5 A statement of account provided by ACT is prima facie proof of the balance due and may be relied upon by ACT.

### **4 Retention of Title**

- 4.1 Ownership of all goods owned by ACT remains the property of ACT until all moneys due and payable to ACT from time to time have been paid in full.
- 4.2 The customer grants to ACT an irrevocable right of entry to any premises on which the Goods are located for the purpose of ACT retaking possession of Goods that belong to it.
- 4.3 The customer agrees and acknowledges that if it breaches any of these terms of trade then ACT may at its sole discretion collect all Goods owned by it pursuant to this retention of title.

### **5 Guarantee & Charge**

- 5.1 The Guarantor hereby guarantees to ACT the due payment of all moneys and performance of all conditions by the Customer. In the event of a default by the Customer ACT may at its sole discretion seek recovery of moneys due to it and performance of obligations due by the Customer without having to first exercise any remedies against the Customer, require and enforce payment of moneys and performance of obligations by the Guarantor.

5.2 The Guarantor hereby irrevocably charges any freehold property owned by him or her in favour of ACT in order to secure the performance of the obligations of the Guarantor and the Guarantor acknowledges that ACT may register a Caveat over such freehold property pursuant to this charge.

5.3 In consideration of ACT contracting with the customer the guarantors guarantee the performance by the customer of all of the customer's obligations under the contract and indemnify ACT against any cost or loss whatsoever arising as a result of the default by the customer in performing its obligations under this contract for whatever reason. ACT may seek to recover any loss from the guarantor before seeking recovery from the customer and any settlement or compromise with the customer will not release the guarantor from the obligation to pay any balance that may be owing to the ACT. This guarantee is binding on the guarantors their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of this contract by the ACT.

## 6 **PPSA**

6.1 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 ACT to give 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 ACT to the Customer;
- (d) Section 132(3)(d) (Contents of Statement of Account after Disposal);
- (e) Sub-section 132(4) (Statement of Account if no Disposal);
- (f) Section 135 (Notice Retention);
- (g) Section 142 (Redemption of Collateral); and
- (h) Section 143 (Reinstatement of Security Agreement).

6.2 ACT is not required to provide the Customer with any Notice pursuant to the PPSA unless the PPSA prescribes that such Notice must be given and cannot be contractually excluded.

- 6.3 The Customer grants to ACT a registerable security interest as defined in the PPSA and agrees and acknowledges that ACT may from time to time register such security interest, and the cost of registration will be a cost to be borne by the Customer. The Customer will not permit any other party to register a security interest in respect to the Goods.

## **7 Delivery of Goods**

- 7.1 ACT will charge to the Customer such charges for freight and handling for the delivery of Goods to an address nominated by the Customer and the cost of such delivery will form part of the Price.
- 7.2 The Customer acknowledges that delivery times are estimates only and can vary substantially depending upon the availability of goods from time to time. ACT is not liable for any delay in delivery or installation.

## **8 Risk in Goods**

The risk in the Goods vests in the Customer upon acceptance of an order and from the point of dispatch from the premises of the ACT. In particular the Customer carries the risk of the Goods whilst the Goods are in transit. The Customer will insure the Goods for full replacement value from time to time until the Goods have been paid for in full and ownership vests in the Customer.

## **9 Force Majeure**

ACT is not responsible for any delay in delivery of Goods or for any defect in Goods that arises out of an event beyond its reasonable control including, but not limited to, delay in delivery or supply of goods as a result of any strike, lock-out or other labour difficulty, delay in supply of goods to ACT from its wholesaler or otherwise. In the event of such an event of force majeure ACT may at its sole discretion elect to delay delivery of the Goods or to cancel the order in part or in its entirety. The Customer shall have no claim arising from late delivery and no entitlement to cancel the order.

## **10 Release**

To the extent permitted by law the Customer releases ACT in respect to any defect in respect to the Goods or for any loss or damage arising out of any defect in the Goods or delay in delivery or installation. In any event where ACT is liable for any defect or delay, its liability shall be strictly limited to the cost of replacement and/or redelivery of the Goods.

## **11 Conflict**

In the event of any conflict between these terms and conditions and any purchase order or other terms and conditions provided by the Customer, then these terms and conditions will prevail in all aspects.

## 12 **Dispute Resolution**

In the event of any dispute arising as to the quality, performance aspects or similar functionality of the product supplied by ACT to the Customer, then such dispute will be referred to Research Laboratory Services Pty Ltd ("RLS") for analysis and the report provided by RLS shall be final and binding upon the parties. The RLS will be borne equality between the parties.

## 13 **Claim for Credit**

13.1 ACT will consider, but is not obliged to grant, a claim for credit if that claim relates to:

- (a) an error on their part in invoicing or delivery; or
- (b) any claims for credit will only be considered if made within seven (7) days from receipt of the Goods and not otherwise.

13.2 Where goods are not manufactured by ACT then the warranty provided by the manufacturer will be the sole warranty provided to the Customer.

13.3 To the extent permitted by law the Customer releases ACT for any other defect in respect to the supply, installation or operation of any equipment and the performance of same and in the event that ACT is liable for any defect in supply, installation or performance the liability of ACT is strictly limited to the cost of replacement of the defective item, or, at the discretion of ACT, the repair of the defective item.