

**ACTIVATED CARBON  
TECHNOLOGIES PTY LTD**

ABN 67 103 713 622

PO Box 1120, Research 3095, Victoria, AUSTRALIA

Phone: 03 9437 2600 Fax: 03 9437 2611

www.activatedcarbon.com.au

## ACTIVATED CARBON TECHNOLOGIES PTY LTD TERMS & CONDITIONS OF TRADE

### 1. Terms & Conditions

- 1.1 The whole of the agreement between Activated Carbon Technologies Pty Ltd (ACN 103 713 622) (**ACT**) and the Customer are those set out in these terms and conditions, any invoice or credit application supplied by ACT and those, if any, which are implied, and which cannot be excluded by law (**Terms**). Any other contractual terms of ACT or the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counteroffer.
- 1.2 By placing an order for the Goods supplied by ACT under these Terms, the Customer shall be deemed to have accepted these Terms and to have agreed that they shall (unless expressly agreed in writing with ACT) apply to the exclusion of all other written agreements with ACT.

### 2. Definitions

In these terms & conditions the following definitions apply:

**Customer** means the purchaser of Goods from ACT pursuant to these Terms whether an individual or a corporation.

**Goods** means all products and services supplied by ACT to the Customer from time to time.

**Guarantor** means the director(s) of an incorporated Customer jointly and severally.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**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.

**Purchase Order** means a purchase order placed by the Customer with ACT for the purchase and delivery of the Goods by ACT to the Customer.

**Purchase Price** means the price for the Goods set out in a relevant Purchase Order.

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

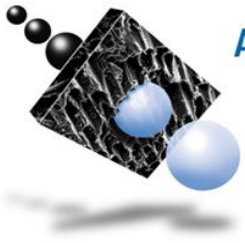
### 3. Purchase Order and Pricing

- 3.1 Prices charged will be determined by ACT by reference to ACT's standard prices in effect at the date of the invoice. ACT may adjust pricing should external factors, including but not limited to, supplier prices, exchange rates or transport costs fluctuate. Subject to clause 16, ACT reserves the right to increase the prices, however, it will not change any prices for an existing order that it has accepted.



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- 3.2 Any GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* or other government imposts shall be payable by the Customer.
- 3.3 Customer is responsible for ensuring the accuracy of all specifications, details and quantities which form the basis of a Purchase Order and otherwise in accordance with clause 16. ACT does not accept any responsibility for any errors in such specifications, details and quantities and shall fulfil the order in conformity with the information supplied by the Customer.
- 3.4 Documents requiring signature may be signed in electronic form and are binding from the time a person affixes a signature on the Customer's behalf.

#### **4. Payment Terms**

- 4.1 In consideration for the Goods, the Customer will pay the Purchase Price to ACT pursuant to these Terms.
- 4.2 Payment of the Purchase Price will be within 30 days from the end of the month of delivery or such other date as ACT nominates at its sole discretion (**Due Date**).
- 4.3 If payment of the Purchase Price is not made on or before the Due Date, ACT may at its sole discretion:
- (a) elect to charge an administration fee for late payment of 6% per annum in respect to the amount unpaid from time to time calculated daily on the outstanding balance. The parties agree that this charge represents a genuine estimate of loss and cost to ACT as a result of late payment.
  - (b) without the need for written notice, refuse to supply further Goods to the Customer.
- 4.4 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.
- 4.5 A statement of account provided by ACT is prima facie proof of the balance due and payable by the Customer to ACT and may be relied upon by ACT.

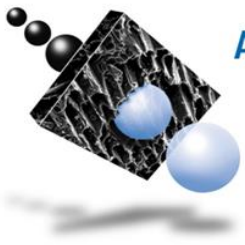
#### **5. Retention of Title**

- 5.1 Ownership of all Goods purchased by the Customer remains the property of ACT until all moneys due and payable to ACT from time to time have been paid in full.
- 5.2 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.
- 5.3 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.
- 5.4 In addition to any lien to which ACT may, by statute or otherwise, be entitled, ACT shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to ACT in the possession of the Customer (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered



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to the Customer under this or any other contract.

### 6. Guarantee & Charge

- 6.1 The Guarantor, and if there is more than one Guarantor each Guarantor jointly and severally, 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.
- 6.2 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.
- 6.3 The guarantee in this clause 6 is binding on the Guarantor their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of these Terms by the ACT.

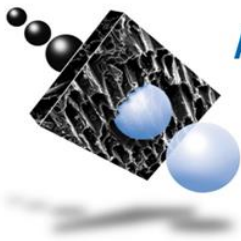
### 7. PPSA

- 7.1 The Customer grants a security interest in the Goods and the proceeds (as defined in the PPSA Law) to secure the obligation to pay the purchase price of the Goods and other of its obligations to ACT under these Terms (together the **Indebtedness**). The Customer warrants that the Goods are not purchased for personal, domestic or household purposes.
- 7.2 The Customer acknowledges and agrees that ACT may from time to time register the security interest granted in clause 6.1, and the cost of registration will be a cost to be borne by the Customer.
- 7.3 Where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the goods present and after acquired by the Customer, of which the Goods form part, to the extent required to secure the Indebtedness.
- 7.4 The Customer waives any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register (**PPSR**). At the Customer's own expense, it will provide all reasonable assistance and relevant information to enable ACT to register on the PPSR and generally to obtain, maintain, register and enforce the security interests created by these Terms.
- 7.5 Any payments received from the Customer shall be deemed to be made and applied by ACT in the following order (unless ACT otherwise determines): (1) to any obligation owed by the Customer which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest (**PMSI**), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
- 7.6 Until the Customer has paid all money owing to ACT, the Customer must at all times ensure that



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(1) all Goods, while in the possession of the Customer, can be readily identified and distinguished, and/or (2) all proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and traceable.

- 7.7 If the Goods are held by the Customer as inventory (as defined in the PPSA Law), then the Customer may sell or lease the Goods in the ordinary course of business. Otherwise until the Customer has paid all money owing to it the Customer must not sell or grant a security interest in the Goods without ACT's written consent.
- 7.8 To the extent permissible by law, the Customer agrees that the following provisions of the PPSA will not apply and it will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.
- 7.9 Section 115(7) of the PPSA allows for the contracting out of provision of the PPSA, the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 127; section 129(2), (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- 7.10 Unless otherwise agreed and to the extent permitted by the PPSA Law, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

## 8. Delivery of Goods

- 8.1 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 Purchase Price.
- 8.2 Any times quoted for delivery and/or supply are estimates only and ACT shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. ACT reserves the right to stop supply at any time if the Customer fails to comply with these Terms.

## 9. Risk in Goods

Notwithstanding clause 5, 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.

## 10. Force Majeure

- 10.1 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 adverse weather conditions, strike, lock-out or other labour



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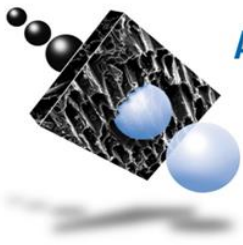
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difficulty, delay in supply of goods to ACT from its wholesaler or otherwise, national emergency, war, global pandemic, prohibitive governmental regulation or any other cause beyond the control of the parties.

10.2 In the event of such an event of force majeure:

- (a) ACT may at its sole discretion elect to delay delivery of the Goods or to cancel the order in part or in its entirety; and
- (b) the Customer shall have no claim arising from late delivery and no entitlement to cancel the order.

## 11. Intellectual Property

11.1 All intellectual property rights (including all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such ACT's rights and interests), including those developed during the supply of the Goods remain the sole property of ACT at all times.

11.2 If ACT terminates these Terms, the Customer must return all intellectual property belong to ACT and the Customer grants ACT an irrevocable licence to enter upon the Customer's premises to reclaim any material incorporating ACT's intellectual property without incurring liability to the Customer or any other person.

## 12. Release

12.1 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.

12.2 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify ACT from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against ACT, except if the Customer is a consumer for the purposes of the Australian Consumer Law or these Terms are deemed to be a small business contract under the Australian Consumer Law.

## 13. Conflict

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

## 14. Dispute Resolution

In the event of any dispute arising as to the quality, performance aspects or similar functionality of the Goods 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



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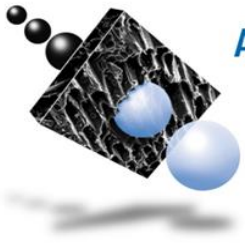
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binding upon the parties save for manifest error. The costs of RLS will be borne equally between the parties.

### 15. Claim for Credit

15.1 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.

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

15.3 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.

### 16. Variation

16.1 ACT may vary these Terms by providing written notice to the Customer (by email, conventional mail or by posting the amended terms on the website).

16.2 If the Customer is a Consumer, or these Terms are deemed to be a Small Business Contract (as these terms are defined in the Australian Consumer Law) and the Customer does not deem the variation acceptable, the Customer may elect to not proceed with the purchase of the Goods ordered before the date of the variation, but which are intended to be subject to the variation.

16.3 If the Customer is not a Consumer and these Terms are not deemed to be a Small Business Contract, the Customer agrees that the variation applies from the date of receiving notice of the varied Terms.

### 17. Failure to Act

ACT's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or ACT's failure to exercise any right or remedy available under these Terms or at law, or ACT's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of ACT's right to demand timely payment of future obligations or strict compliance with the Terms.

### 18. Legal Construction

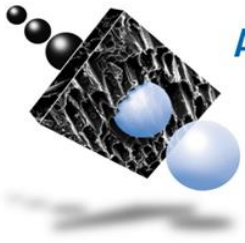
18.1 These Terms shall be governed by and interpreted according to the laws of Victoria and ACT and the Customer consents and submits to the jurisdiction of the Courts of Victoria.

18.2 Notwithstanding that any provision of these Terms may prove to be illegal or unenforceable



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pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of these Terms shall continue in full force and effect.



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