

# **Apiam Terms and Conditions of Sale**

## DEFINITION

'Affiliates' means a related entity as defined in *s9 Corporations Act 2001*.

'Apiam' means Apiam Animal Health Limited (ABN 50 604 961 024) and its Affiliates.

'Buyer' means the addressee specified on documents or invoices subject to this contract issued by Apiam.

'Cash Account' means the payment occurs before shipment of Goods or performance of the Services.

'Credit Account' means the pre-approved accounts on agreed payment terms.

'Consumer' means a consumer as defined in the *Australian Consumer Law*.

'Goods' means any item of whatsoever nature which is sold by Apiam under these Terms.

'Services' means any service of whatsoever nature which is provided by Apiam under these Terms.

'Terms' means these Terms and Conditions of Sale

## 1. QUOTATIONS

All quotations are made and all orders are accepted subject to the following conditions. No other conditions contained in an order of the Buyer or otherwise shall form part of the contract or any variation thereof unless expressly accepted by Apiam in writing. The placement of an order with Apiam by the Buyer constitutes an unqualified acceptance and agreement of these Terms by the Buyer. Buyer and Apiam agree that if these terms conflict with any other document, agreement or arrangement, these Terms shall prevail to the extent of the inconsistency.

## 2. PRICE

a) The price shall be the price ruling at the Delivery Date unless otherwise agreed in writing. Any price indications or price lists are subject to alteration to price ruling at the Delivery Date.

b) All prices on the Website are shown in AUD and will display GST inclusive and GST exclusive amounts and do not include any postage, handling, freight, packing, or insurance fees.

c) In the event Goods are listed at an incorrect price due to a typographical error or error in pricing information received from Apiam's suppliers, Apiam shall have the right to refuse or cancel any orders placed for Goods listed at the incorrect price. Apiam shall have the right to refuse or cancel any such orders whether or not the order has been confirmed

and a credit card charged. If a credit card has already been charged for the purchase and an order is cancelled Apiam shall immediately issue a credit to the credit card account in the amount of the incorrect price. If invoiced through a Credit Account, then the Buyer shall have the right to either return the Goods at Apiam's expense or accept an adjustment to the correct price.

## 3. ORDERS

(a) Your receipt of an electronic or other form of order confirmation does not signify Apiam's acceptance of your order, nor does it constitute confirmation of Apiam's offer to sell.

(b) Apiam reserves the right at any time after receipt of your order to accept or decline your order for any reason. Apiam reserves the right at any time after receipt of your order, without prior notice to you, to supply less than the quantity you ordered of any Goods. Please note that the processing of a payment does not constitute acceptance or verification of an order. Apiam may require additional verifications or information before accepting any order.

(c) Orders will be accepted via email, phone or as entered to the on the Apiam website and its Affiliates.

(d) Where Apiam accepts an order, it will email confirmation of the order to the Buyer (to the email address provided by the Buyer in the order) or contact the Buyer directly. Once the order has been shipped Apiam will send a notice of dispatch to the Buyer (to the email address provided by the Buyer in the order).

(e) Where ordered Goods are temporarily out of stock Apiam will contact the Buyer for further instruction and place the Goods on backorder if requested by the Buyer. If the order has been placed by a Buyer with a Cash Account and the Good is going to be out of stock for more than 5 days then the Buyer will be offered a refund. Apiam will send the notice of dispatch to the Buyer when the backorder has been filled.

(f) Apiam is not liable for any loss or damage, including consequential loss or loss of profits, suffered by the Buyer arising from, or related to, any delay in filling or inability to supply any order in whole or in part.

## 4. DELIVERY

Apiam will make all reasonable efforts to have the goods delivered to the Buyer on the date agreed

between the parties ('Delivery Date') but Apiam shall be under no liability whatsoever should delivery not be made on this date. Unless otherwise specified, delivery of all Goods shall be made at the nearest convenient unloading point (either road or rail) to the Buyer's address or other agreed place ('Delivery Point')..

Delivery of Services may be in person or by electronic means, including telemedicine, which the consumer and buyer acknowledges carry potential risks, such as, interruptions, unauthorized access and technical difficulties

#### 5. DAMAGE IN TRANSIT

All Goods shall be examined by the Buyer on delivery. Apiam shall not be liable for claims in respect of shortage or damage in transit unless the carrier and Apiam are notified in writing within 2 days of delivery - or in the case of non delivery, notice being given in writing within 2 days of notice of despatch of the goods from the works of Apiam or its subcontractors.

Without limiting the discretion of Apiam to accept returns in other instances, Apiam will only accept the following returned Goods which Apiam is satisfied were damaged in transit before reaching the Delivery Point;

- (a) Goods which did not correspond with the order;
- (b) Goods faulty in materials or workmanship with documentary or photographic evidence satisfactory to Apiam.
- (c) Apiam will only accept a claim in respect of a Good which is claimed to be damaged or defective by way of a temperature excursion upon delivery being fulfilled, if the Buyer notifies Apiam of the claim (providing such evidence of the temperature excursion as Apiam considers reasonable) within two hours of the delivery being fulfilled.
- (d) Apiam will not accept return of the following Products:
  - (i) Products sold on a non-return basis;
  - (ii) Products with a broken seal or with label removed;
  - (iii) Products which have an expiry / best before date which in Apiam's view is unreasonably close to the date of return or had expired as at that date.

#### 6. CONSUMER'S STATUTORY RIGHTS

These conditions of sale shall not exclude, limit, restrict or modify the rights, entitlements and

remedies conferred upon the Consumer or the liabilities imposed upon Apiam, by any condition or warranty implied, by the commonwealth, state or territory act or ordinance, rendering void or prohibiting such exclusion, limitation, restriction or modification.

If you are a Consumer, our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

#### 7. WARRANTIES

Subject to Clause 6 above,

(a) Apiam warrants that the Goods supplied shall be of merchantable quality. All Goods are supplied subject to this warranty only and any liability arising out of or in respect of the supply, resupply, use or reuse whether singly or otherwise of these Goods, whatsoever arising and whether for consequential loss or otherwise and including any liability Apiam may otherwise have had by virtue of any representation, warranty, condition or term whether express or implied by law is hereby excluded to the extent permitted under the *Competition and Consumer Act 2010* .

(b) Apiam warrants that Services supplied shall be supplied in a careful, safe, thorough and professional manner, in accordance with all applicable laws, codes and standards.

(c) Any liability incurred by Apiam to the Buyer is limited to the replacement or repair of the Goods or Services supplied or (at the option of Apiam) refund of the price paid by the Buyer, for a period of 12 months from the date of sale, provided the goods have not been damaged through misuse or handling and in particular does not extend to consequential loss.

(d) To make a claim under this warranty, the Buyer can contact Apiam on [enquiries@apiam.com.au](mailto:enquiries@apiam.com.au), or call 1800 426 142, or contact their local Apiam

Representative listed on the [www.apiam.com.au/contact/](http://www.apiam.com.au/contact/) website. The Buyer should specify the full particulars of such claim and wherever possible return a sufficient part of the Goods to enable a proper examination by Apiam.

(e) The Buyer will indemnify Apiam for all and any loss and damage whatsoever or howsoever incurred by it, whether as a direct or indirect result of the Buyer's failure to observe these Terms, the Buyer's failure to discharge its duties under the common law or the Buyer's failure to discharge its duties under statute, or otherwise.

(f) The Buyer accepts all risk and responsibility for consequences arising from the improper use of the Goods.

#### 8. ADVICE

Subject to Clause 5, any advice, recommendation, information, assistance or service provided by Apiam in relation to Goods sold or manufactured by it, Services provided or their use or application is given in good faith and is believed by Apiam to be appropriate and reliable and is provided without liability or responsibility on the part of Apiam. This clause also applies to product specifications and analyses which may from time to time be required to be provided to the Buyer from Apiam.

#### 9. RISK

The assessment of the suitability of the Goods or Services offered by Apiam for use by the Buyer, either in a process or incorporation in a product, is the sole responsibility of the Buyer irrespective of any information verbal or written given to the Buyer by Apiam. The Buyer assumes all risks and liabilities for consequences arising from the use of Goods or Services from the Delivery Date, whether singly or in combination with other products and indemnifies Apiam in respect of any such use. The Buyer must insure the Goods to ensure effective insurance from the Delivery Date.

#### 10. PAYMENT

(a) Buyer accounts are offered on a Cash Account or Credit Account basis (subject to credit approval by Apiam).

(b) Buyers with Cash Accounts will have their credit card billed on placement of the order and payment must be made in full and cleared funds before Apiam will dispatch goods.

(c) Buyers with Credit Accounts must pay for each invoice within 25 days of the last day of the month in which the invoice is dated ('Due Date').

(d) Payments for Credit Accounts may be made by electronic funds transfer (EFT) to the bank account nominated on the invoice or by credit card. Payments for Cash Accounts can be made by cash, EFT and credit cards accepted by Apiam's banking facility. Surcharges will apply on all credit card payments that reflects the cost to Apiam by their bank.

(e) If payment in full is not received on or before the Due Date for Credit Account customers, Apiam may charge an overdue payment administration fee of \$12.50 and interest on overdue amounts at the interest rate applicable to civil debts under the *Penalty Interest Rate Act 1983 (Vic)*. (f) If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify Apiam from and against all costs and disbursements incurred by Apiam in pursuing the debt including legal costs on an indemnity basis and Apiam's reasonable collection agency costs.

(g) If the Buyer makes default in any payment or commits any act of bankruptcy or being an incorporated company, passes a resolution for winding up (except for the purpose of reconstruction) or a petition is presented for its winding up, Apiam may without prejudice to its own rights either suspend further deliveries, require payment in advance for all such deliveries, withhold any rebates payable to the Buyer, require return of all Goods in the Buyer's possession or terminate any contract forthwith by written notice to the Buyer. Where the payment is to be made from places outside of Australia, the normal method of payment shall be a confirmed irrevocable bank letter of credit designated in Australian Dollars from a bank approved by Apiam guaranteeing full settlement to an agreed bank payable on presentation of the documents.

(h) Apiam will provide the Buyer with an order confirmation and an invoice in respect of each order, as well as monthly statements.

#### 11. RESERVATION OF TITLE

(a) Property in the Goods shall remain with Apiam and Apiam reserves the right to dispose of the Goods until such time as:

(i) full payments made for all amounts owing by the Buyer to Apiam so that the Buyer's total

indebtedness to Apiam under these Terms is discharged; or

(ii) the Buyer sells the goods to its customers in the ordinary course of business.

(b) If the Buyer fails to pay any amount of the Buyers total indebtedness to Apiam under these Terms when it is due to Apiam or, in event of default as specified in this subclause occurs, Apiam may without notice and without prejudice to any of its other rights and remedies recover and/or re-sell the Goods or any of them and may enter upon the Buyers premises by its servants or agents for that purpose.

(c) The Buyer acknowledges that until his total indebtedness under these Terms to Apiam is discharged, the Buyer holds the Goods as bailee of Apiam and that a fiduciary relationship exists between them.

(d) In the event of sale of the Goods to its customers, the Buyer in its position as a fiduciary shall account to Apiam for the proceeds of the sale (unless and until the Buyer's total indebtedness to Apiam under these Terms is discharged).

## 12. PERSONAL PROPERTIES SECURITY ACT 2009 (PPSA)

(a) In this clause, unless otherwise defined in these Terms, capitalised expressions have the meaning given to them in the PPSA.

(b) Buyer acknowledges and agrees that by entering into a contract of sale under these Terms, Buyer grants a Security Interest to Apiam in the Goods and any proceeds of sale in respect to those Goods and also consents to Apiam registering any one or more Financing Statements or Financing Change Statements in respect to any such Security Interest created by or contemplated by these Terms.

(c) Buyer and Apiam agree for the purposes of satisfying s20(1)(iii) of the PPSA, that the description of Goods as shown on any invoice from Apiam is the subject of each and any Security Interest created under these terms and such and every invoice is incorporated into these Terms.

(d) Buyer agrees that it is the Grantor and Apiam is the holder of a Purchase Money Security Interest (PMSI) by virtue of these Terms or the PPSA. Buyer also agrees that that it is the Grantor and Apiam is the holder of a Security Interest in the Collateral or Goods.

(e) Buyer agrees that the following provisions of the PPSA will not apply to these Terms:

Sections 95, 96, 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143.

(f) Unless otherwise agreed in writing with Apiam, the Buyer waives its rights to receive a verification statement in accordance with s157 of the PPSA.

(g) For the purposes of s275(6) of the PPSA, Buyer and Apiam agree that neither party will, or is entitled to, disclose information of the kind specified in s 275(1) of the PPSA.

(h) Buyer agrees with Apiam that it will not enter into any agreement or arrangement which permits any other person to register any Security Interest in respect to unpaid Goods, proceeds of sale of unpaid Goods or any accounts owed in respect of the unpaid Goods without Apiam's consent.

(i) Buyer agrees to give Apiam at least 10 days prior written notice before changing any of its corporate details, such as its name, ABN or ACN, or principle place of business.

(j) Buyer agrees it shall unconditionally ratify any actions taken by Apiam under this clause.

(k) Buyer agrees to reimburse Apiam for all costs and/or expenses incurred or payable by Apiam in relation to registering, maintaining or releasing any Financing Statement or Financing Change Statement under these terms.

(l) This clause will survive the termination of the contract for sale and purchase of Goods between the Buyer and Apiam to the extent permitted by law.

## 13. FORCE MAJEURE

Deliveries may be totally or partially suspended by Apiam during any period in which Apiam may be prevented or hindered from making delivery through any circumstances outside its reasonable control, including but not limited to strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery. Apiam shall not be under any liability in respect of such suspension and in particular, Apiam shall be under no obligation to deliver at any future date any Goods or Services not delivered during the period of suspension.

## 14. FUTURE DEALING

Unless otherwise agreed to in writing by Apiam and not withstanding any terms appearing in documentation provided by or on behalf of the Buyer the terms appearing herein shall be incorporated by implication into all agreements by Apiam to supply the Buyer with goods.

#### 15. CANCELLATION

Cancellation will only be accepted by Apiam on condition that all costs and expenses and all loss of profits and other loss or damage sustained by Apiam (as to which the certificate of the auditor of Apiam shall be conclusive) will be reimbursed by the Buyer to Apiam forthwith.

#### 16. AUSTRALIAN LAW

These Terms are governed by the laws of Victoria, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

#### 17. NOTICES

Any notice given to the Buyer shall be deemed to be given upon its being posted or sent by facsimile/email to the address of the Buyer set out in documents and invoices.

#### 18. DANGEROUS GOODS

The Buyer warrants to Apiam that after delivery of the Goods and whilst Apiam retains any interest in the Goods, you will comply with all applicable Acts, Regulations and Laws dealing with the transport, unloading, storage, sale or use of dangerous or hazardous materials.

#### 19. ACCESS

You irrevocably grant to Apiam authority to enter into, forcibly or otherwise, all of your owned and leased premises for the purpose of inspecting or removing any of Apiam's goods.

#### 20. RESERVATION OF RIGHTS

Notwithstanding anything else in these Terms, any exercise or attempted exercise, of any enforcement right by Apiam under these Terms does not prejudice or limit, in any respect, any other rights or remedies of Apiam arising at law or in equity.

#### 21. SEVERANCE

If the whole or any part of these Terms is invalid or unenforceable for any reason, the invalid or unenforceable clauses will be severed from these Terms and the validity of the remaining clauses will be preserved.

March 2020.