

General Terms and Conditions of Sale

1. **INTERPRETATION**

"Buyer" means the person or company placing an order with EnduraColor for the purchase of Products.
"Products" means all products and merchandise supplied by EnduraColor in accordance with these conditions, to the Buyer or as the Buyer may direct.
2. **ORDERS**

These conditions shall apply to all orders for Products placed by the buyer with EnduraColor to the exclusion of all other terms and conditions unless otherwise expressly agreed in writing. If the terms of the Buyer's order are inconsistent with these conditions, the acceptance of the delivery of the Products by the Buyer carries with it acceptance of these Terms and Conditions of Sale.
3. **ENDURACOLOR MAY DECLINE ORDERS**

EnduraColor reserves the right to accept in whole or part any order or decline any order for Products.
4. **CANCELLATION OF ORDERS**

Once lodged with EnduraColor, the Buyer may not cancel or delay delivery of an order without EnduraColor prior written agreement.
5. **DESPATCH**

Every endeavour will be made to despatch Products ordered for immediate delivery no later than one (1) week following receipt of the order by EnduraColor.
6. **BACK ORDERS**

Products which are temporarily out of stock will only be placed on back order at the Buyer's request.
7. **DELIVERY**
 - 7.1 Where delivery of the Products is affected by way of part delivery, EnduraColor shall invoice the Buyer only for those Products delivered.
 - 7.2 EnduraColor shall not be liable for any loss or damage (including consequential loss or damage) arising from delay in delivery or failure to deliver the Products due to circumstances beyond its reasonable control and the Buyer shall accept and pay for Products notwithstanding late delivery.
 - 7.3 Delivery of the Products shall be deemed to be effected as follows:
FIS - when the Products are made available for unloading at the Buyers nominated delivery site from EnduraColor nominated carrier
FOB - when the Products are loaded onto the Buyer's nominated carrier's vehicle at EnduraColor premises, or loaded onto the carrier's vehicle usually used by EnduraColor.
FOR - when the Products are made available to the rail carrier.
 - 7.4 The Buyer shall be responsible for and shall indemnify EnduraColor for loss or damage to the Products from the time of delivery until paid for in full.
 - 7.5 Shortages in delivery must be reported to EnduraColor by the Buyer immediately upon receipt.
 - 7.6 Products damaged upon delivery shall be reported to EnduraColor with seven (7) days of receipt of the Products by the Buyer.
8. **RETURN OF PRODUCTS**

No Products shall be returned without the prior consent of EnduraColor and then only by the carrier nominated by EnduraColor. Where Products are returned without such consent, the same shall be returned to the Buyer at the Buyer's expense. Personalised products will not be accepted for return. EnduraColor may charge a 15% surcharge for return goods at our discretion.
9. **TERMS OF PAYMENT**
 - 9.1 Payment of Products shall be made by the buyer to EnduraColor on placement of Purchase Order. Where payments are overdue, EnduraColor may, at its option, either cancel orders forthwith or suspend delivery of Products and reserve the right to charge interest at the rate of 1% over the ninety (90) days bank bill rate normally charged by ANZ Bank Ltd on the overdue amount, calculated daily.
 - 9.2 The buyer agrees that EnduraColor has the right to make any enquiries from any credit reporting agency to ascertain the credit and financial suitability of the Buyer.
 - 9.3 All prices are net and are not subject to settlement, discount or retention.
 - 9.4 The Buyer agrees that all costs incurred by EnduraColor in the recovery of unpaid accounts including commissions paid to EnduraColor agents shall be paid by the Buyer.
 - 9.5 All prices for Products are subject to alteration without notice and will be those prices which are on the date of despatch.
10. **INDEMNITY**

Without prejudice to any other rights EnduraColor may have, the Buyer shall indemnify EnduraColor for any loss, damage or expense incurred by EnduraColor should the Buyer cancel any order or part thereof or breach any term hereof.

11. CONDITIONS OF PAYMENT

- 11.1 Unless by prior agreement, all purchases must be paid for in full at the time the Buyer places the order with EnduraColor.
- 11.2 EnduraColor shall retain title to the Products supplied by it to the Buyer until it has received all monies which are owing by the Buyer to EnduraColor.

12. INSURANCE

- 12.1 The Buyer will insure the Products for so long as they shall remain EnduraColor property.
- 12.2.1 EnduraColor will be entitled to receive insurance proceeds or trace insurance proceeds received in respect of any Products.

13. QUOTATIONS

A quotation from EnduraColor is an offer to sell only upon these terms and conditions and remains current for 30 days only from the date submitted unless previously withdrawn in writing by EnduraColor.

14. FORCE MAJEURE

EnduraColor shall in no circumstances be liable to the Buyer for any loss of use, loss of profit or any loss suffered by the Buyer as a result of any delay or suspension or cancellation of delivery of the Products for any reason whatsoever.

15. DEFECTS & LIABILITY

- 15.1 The Buyer shall notify EnduraColor of any defects in the Products within two (2) days of delivery to the Buyer.
- 15.2 EnduraColor liability is subject to its obligations pursuant to any law of the Commonwealth of Australia, its States and Territories and is limited to replacing of the Products and confirmation of the alleged defects by EnduraColor.
- 15.3 EnduraColor shall not have any liability if defects have been caused by abnormal or incorrect conditions for operation, use, storage pending use, accident, misuse or negligence by the Buyer, its employees, servants or agents nor if the Product is not used in accordance with EnduraColor guidelines or instructions issued from time to time.
- 15.4 To the extent permitted by law:
- 15.4.1 EnduraColor excludes all warranties, conditions, representations or obligations of whatsoever nature relating to the Products;
- 15.4.2 EnduraColor sole and exclusive liability is the obligation to repair or replace Products pursuant to clause 15.2. EnduraColor will not be liable for any loss or damage whatsoever, including incidental, special, consequential or general damages (such as, but not limited to, loss of profits, loss of business or claims by third parties) arising from any cause whatsoever and EnduraColor total liability to the Buyer and generally in respect of Products shall be as set out in clause 15.2; and
- 15.4.3 Rights may be conferred upon the Buyer or a customer or obligations imposed upon EnduraColor by state and federal legislation in Australia which cannot be excluded. If so, the above provisions should be read subject to those rights, provided that EnduraColor expressly limits its liability under any such legislation to the minimum extent permitted by law.
- 15.5 Whilst EnduraColor may provide technical assistance, the Buyer is responsible for advising its customers about the application of the Products, the fitness for particular purposes and their use generally.
- 15.6 The Buyer covenants that neither it nor its agents or employees shall make any representations, statements or warranties to customers which are different, more onerous, or inconsistent with any warranty contained in this clause 15 or with any details set out in any product literature or other publication issued by EnduraColor. The Buyer agrees to indemnify EnduraColor against and hold EnduraColor harmless from all or any claims, liability, obligations, losses, expenses or damages arising out of any representations, statements or warranties made by the Buyer, its agents or employees contrary to the provisions of this clause 15.

16. TAXES

Any taxes, duties or Government charges (including penalties and interest) imposed upon EnduraColor relating to the Products shall be an additional charge to the Buyer and the Buyer will indemnify EnduraColor against any such liability however and whenever arising.

We reserve the right to change details at any time without notice.