

FX Australia Pty Limited

ABN 75 089 071 385

TERMS & CONDITIONS OF SALE

These terms and conditions of sale apply only to all retail sales made by FX Australia Pty Limited. Any persons wishing to distribute or sell FX Australia products should contact sales@fxaustralia.com.au for terms and conditions relating to such sales.

1. DEFINITIONS

In these terms and conditions:

- (a) *'Delivery'* means delivery to the Purchaser, the Purchaser's nominated agent or a carrier engaged or nominated by the Purchaser.
- (b) *'Delivery Date'* means the date of delivery of the Goods by FX (or FX's agent) to the Purchaser.
- (c) *'FX'* means FX Australia Pty Limited (ABN 75 089 071 385) and any related body corporate of FX within the meaning of section 50 of the *Corporations Act, 2001*.
- (d) *'Goods'* means all products ordered by the Purchaser from FX which orders have been accepted by FX.
- (e) *'Purchaser'* means the person or entity which orders or agrees to purchase the Goods the subject of these terms and conditions of sale.

2. CONTRACTUAL TERMS

- 2.1. The only terms which are binding upon FX are those set out in this document or otherwise agreed to in writing between FX and the Purchaser.
- 2.2. The supply of Goods under these terms and conditions is governed by the laws of the State of New South Wales. FX and the Purchaser agree to submit to the jurisdiction of the Courts of that State.

3. WARRANTY – CONDITION OF GOODS

- 3.1. Subject to the provisions of the *Competition and Consumer Act 2010* and any other relevant and applicable State and/or Commonwealth legislation:
 - (a) FX warrants that the Goods are free of defects and fit for purpose;
 - (b) FX's liability for breach of sub-clause 3.1(a) or a condition or warranty, including the Statutory Provisions is limited to any one of the following, at the sole discretion of FX:
 - (i) repair or replacement of the Goods or supply of equivalent Goods; or
 - (ii) refund of the price paid by the Purchaser for the Goods.

PROVIDED THAT

- 3.2. The Purchaser will examine the Goods immediately upon receipt for defects and will notify FX of any defects in writing by contacting Dianne Sanvito by mail at PO Box 7057 Wetherill Park DC NSW 1851 within 7 days of the Delivery Date and FX, in its sole and unfettered opinion, is satisfied that the Goods were defective at the Delivery Date.
- 3.3. If the Purchaser fails to notify FX of any defects within 7 days of the Delivery Date, the Purchaser is deemed to have accepted the Goods.

- 3.4. If the Purchaser is a consumer as defined in section 3 of the Australian Consumer Law, FX provides that:

'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of an acceptable quality and the failure does not amount to a major failure.'

- 3.5. To the extent permitted by law, FX excludes all liability to the Purchaser for any loss (including but not limited to loss of profits and consequential or indirect loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts of omissions) of FX **PROVIDED THAT** the Goods were free of safety defects at the time of delivery and the Purchaser's injuries were not the result of any safety defect in the Goods;

- 3.6. The Purchaser acknowledges that FX has no control over the conditions under which the Goods are applied, used, stored, transported or handled, subsequent to their dispatch by FX and the Purchaser agrees to test the Goods thoroughly before adapting them for its own use.

- 3.7. Nothing contained in this Clause shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of the *Australian Consumer Law* contained in Schedule 2 of the *Competition and Consumer Act 2010* or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified **PROVIDED THAT** to the extent that any such Statute permits FX to limit its liabilities to compensate or indemnify any person for breach of a condition or warranty thereby, then the respective liabilities of FX for such breach shall be limited in the case of goods to the replacement of the goods or supply of equivalent goods.

4. DELIVERY

- 4.1. FX will make all reasonable efforts to have the Goods delivered in accordance with the delivery requirements set out in the FX website. However, FX will not be liable for any loss or damage howsoever arising resulting from delays in delivery.

5. RISK

- 5.1. Unless otherwise agreed by the parties in writing, all risk in and title to the Goods (including all responsibility for safety, storage and handling of the Goods) will pass to the Purchaser upon Delivery.

6. PRICE

Unless otherwise agreed by the parties in writing, the price charged for the Goods will be the price as determined by FX at the Delivery Date.

7. PAYMENT AND DEFAULT

- 7.1. FX will not despatch any Goods until FX has received payment in full for the Goods.

8. **INTELLECTUAL PROPERTY**

8.1. For the purposes of this provision, Intellectual Property means intellectual property, trade marks, trade dress, formulae, brands, labels, labelling designs, or other indicia of ownership or product identities imitating or resembling those of FX which are used on or associated with the Goods and in connection with the sale and distribution of the Goods and in the promotion of FX's business and the Goods.

8.2. The Purchaser agrees that all Intellectual Property is owned by FX. The Purchaser agrees not to register, use or apply or permit the registration, use or application of any Intellectual Property. The Purchaser further agrees not to associate, use or apply the Intellectual Property directly or indirectly to any business with which the Purchaser is associated in any way or to any articles or products manufactured or distributed in any form whatsoever by or for the Purchaser other than the Goods as supplied by FX.

9. **FORCE MAJEURE**

FX will not incur any liability to the Purchaser in relation to any total or partial suspension by FX of manufacture, delivery or supply of goods through any circumstances outside FX's reasonable control, resulting from (without limitation) natural disasters, strikes, war or acts of terrorism, lock-outs or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents, breakdown of plant, machinery, software, hardware or communication network.

PRIVACY

As concerns Goods supplied to the Purchaser on credit, the Purchaser irrevocably authorises FX, its employees and agents to make any enquiries as FX considers desirable to investigate the credit worthiness of the Purchaser, from time to time. These inquiries may include the making of enquiries of persons nominated by the Purchaser as trade referees, the bankers of the Purchaser or any other credit providers (Information Sources) and the Purchaser hereby authorises the Information Sources to disclose to FX any information concerning the Purchaser which is within the possession of the information source and which is requested by FX.

10. **SEVERANCE**

If any provision of these terms and conditions or their application is held to be invalid, illegal or unenforceable the provision will be read down to the extent necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these terms and conditions will not be affected or impaired in any way.

Privacy Policy

About this Policy

The *Privacy Act 1988 (Cth)* (**Privacy Act**) applies to the collection and use of your personal information. FX Australia Pty Ltd (ABN 75 089 071 385) (**our, us, we**) is committed to the protection of the personal information of all its customers. We have developed this Privacy Policy in line with the 'Australian Privacy Principles' (**APPs**) and the Privacy Act to tell you how we collect, hold, use and disclose your personal information and how you may access and correct it.

Please read through this Policy before you provide us with any personal information. We also encourage you to check this Policy regularly as it may change from time to time. If you have any suggestions or concerns that are not addressed in this Policy, please contact us.

All of the personal information about you that you provide to us or that we receive will be collected, held, used and disclosed in accordance with this Policy and the APPs, and you consent to us doing so. We will only collect, hold, use or disclose your personal information in other circumstances with your express consent.

What kind of personal information do we collect?

We will only collect personal information about you if it is reasonably necessary for our functions and activities. We may collect information from you that personally identifies you such as your name, email address, home address, telephone number, gender, date of birth and age.

Financial information

We may collect financial information from you (such as credit card details).

Unless you otherwise consent, financial information that you provide to us in the course of making any purchase of products will be shredded once it has been used for the purpose for which it was given.

Sensitive information

We generally will not collect sensitive information about you (such as racial or ethnic origin, political opinions, religious or philosophical beliefs or details of health or disabilities). However, if we do collect sensitive information we will do so in compliance with the APPs.

Non-personal information

We may collect information that does not personally identify you to improve your experience on our website. We may obtain this information by the use of 'Cookies' (a small data file transferred to your device that recognises your device and allows your device to 'remember' information from our website). We do not use Cookies to obtain information that personally identifies you. Your device should allow you to refuse Cookies if you wish however you may not be able to use all aspects of our website if you do so.

Pseudonyms

You do not need to identify yourself to use our website, however, it is impracticable for us to provide you with goods or services if you do not identify yourself. In such circumstances, a pseudonym is not sufficient.

How do we collect personal information?

We collect personal information directly from you in the normal course of business, including electronically when you visit our website. You may be asked to provide us with personal information when you:

- purchase goods or services from us;
- return goods to us;
- enter into competitions with us;
- create an account with us or on our website;
- become a FX VIP member;
- join our mailing lists; or
- make an enquiry with us or correspond with us.

From time to time we may receive personal information about you that we have not requested. In these circumstances, we will only hold such information where the information is necessary for our dealings with you, which we will decide within a reasonable time after receiving the information. If we determine that the information received is not necessary for our dealings with you, we will take steps to de-identify or destroy the information as soon as is practicable. Any information that we retain will be held in accordance with this Policy.

If we collect personal information about you, we will take such steps as are reasonable in the circumstances, to notify you that we have collected personal information about you, how it was collected, and why we have collected it and provide you with a copy of this Policy.

How do we hold personal information?

We will use all reasonable endeavours to maintain the security of your personal information and to protect your personal information from misuse, interference and loss and against unauthorised access, modification or disclosure. Any personal information that we receive is securely stored and access is restricted to our authorised personnel via electronic passwords and locked and alarmed premises.

How do we use personal information?

If we hold personal information about you that was collected for a particular purpose, we will not use or disclose it for another purpose unless: (a) you consent; (b) you would reasonably expect us to use or disclose it for that other purpose; or (c) it is required or authorised by law or a court/tribunal order.

We generally use personal information, and you consent to us using your personal information, to:

- deliver or help you manage our goods or services;
- complete transactions with you or on your behalf;
- help us manage and improve our services and website;
- communicate with you; and
- send you ongoing information, offers and promotional material about opportunities, products and services which we believe may be of interest to you.

You will be given the opportunity to "opt out" or unsubscribe from receiving communications from us. Alternatively, you may contact us at the address below to unsubscribe from any future communications from us. We will use all reasonable endeavours to comply with that request within a reasonable period, and in any event, within five business days.

Who do we disclose personal information to?

You consent to us disclosing your personal information to our authorised personnel and to third parties engaged by us to perform functions or provide products or services on our behalf such as processing credit card information, mail outs, debt collection and advertising.

We reserve the right to disclose your personal information: if we are required or authorised to do so by law; if it is reasonably necessary, in our opinion, to protect our rights or property or that of any third party; or to avoid injury to any person.

If we sell all or part of our business, merge with another business or restructure our business (or contemplate doing this), we may transfer or disclose your personal information to the parties involved in the transaction.

Overseas

We may store some of your personal information through platforms licensed and operated overseas. You hereby consent to the disclosure of your personal information to those (and any similar) recipients and you acknowledge that as a result of your consent to such disclosure, clause 8.1 of the APPs does not apply.

How do you access and correct your personal information?

We will take reasonable steps to ensure your personal information is accurate, up to date, complete, relevant and not misleading.

Access

If you ask, we will usually provide you with access to your personal information we hold about you within a reasonable time. There are some exceptions to this which are set out in clause 12.3 of the APPs. If we refuse to give you access, we will give you written notice setting out the reasons for our refusal and the mechanisms available if you wish to complain about our refusal.

If it is reasonable and practicable to do so, we will give you access in the particular manner you request. Otherwise, we will take reasonable steps to give you access in a way which meets both our needs. We may impose a reasonable charge for giving you access to your personal information.

Correction

If we are satisfied that your personal information is inaccurate, out of date, incomplete, irrelevant or misleading, we will take reasonable steps to correct your personal information. If you request it, we will also take reasonable steps to notify any other entity of the changes if we have previously provided your personal information to that entity. There is no fee for correcting your personal information.

How do you contact us or make a complaint?

If you have any questions or comments on this Policy, are concerned about how your personal information is being handled or if you would like to make a complaint, please contact our Privacy Officer by:

- emailing us at: privacy@fxaustralia.com.au
- calling us on: 02 9725 5888; or
- writing to us at: 86 Redfern Street, Wetherill Park NSW 2164.

We will acknowledge receipt of your complaint as soon as we can. We aim to resolve complaints as quickly as possible. If we do not believe we will be able to resolve your complaint in a timely manner, we will let you know what is happening and a date by which you can reasonably expect a response.

If you are unhappy with our response, you may complain to the Office of the Australian Information Commissioner about the handling of your personal information. The Commissioner can be contacted at:

GPO Box 5218
Sydney NSW 2001
Phone: 1300 363 992
Email: enquiries@oaic.gov.au
www.oaic.gov.au

Terms of Use of Website

Welcome to FX Australia's website. This website is owned and operated by FX Australia Pty Ltd (ABN 75 089 071 385) (**we, us, our**). FX Australia provides specialised, high-end architectural paints and coatings for residential and commercial applications. This website is to provide you with information about our products and services.

You may only use this website in accordance with these Terms of Use. We may change the Terms of Use at any time. Your continued use of the website after such change is confirmation of your acceptance of the changes.

1. Privacy policy

All personal information about you that you provide to us (including via this website), or that we collect, is subject to our Privacy Policy which can be accessed here.

2. Purchases of our products and services

To purchase our products please contact us at: sales@fxaustralia.com.au

Any purchases will be subject to terms and conditions of sale or supply, copies of which can be accessed here

The display of any product or service does not constitute an offer or undertaking by us and is no guarantee that those products or services are available for purchase.

2.1. Prices

All prices are in Australian dollars and include GST. Orders may be subject to delivery charges. If so, we will advise you of this at the time of your order.

2.2. Delivery of products

Your order will usually be dispatched within 5 working days from the time payment is confirmed by your bank. There may be a delivery charge depending on the chosen method of delivery.

It is your responsibility to ensure that the address you provide for delivery is correct. We will charge you an additional delivery fee for any product returned to us because you supplied an incorrect address. Please note that deliveries cannot be made to a PO Box.

Please note that your order will not be dispatched until we have received full payment. Deliveries are usually within 10 business days but may be longer for remote locations depending on the chosen delivery method.

3. Website material

All material on this website, including written material, designs, patterns, pictures, graphics, names, logos and trade marks (**Material**) and all intellectual property (including copyright) in the Material is owned by or licensed to us. You are hereby granted a non-exclusive, non-assignable and non-transferable licence to use the website and view the Material to assess our products and services for your own use. Except as set out above, you must not copy, modify, reproduce, alter, sell, re-publish, licence, frame, upload, post, transmit, distribute, display, communicate or use the Material in any way or use any device or software that may interfere with the proper functionality of the Material or the website.

4. FX membership

We may provide the option for you to become a member of our website (**Member**) by creating an account on our website. Before granting you membership, we reserve the right to require you to complete a FX membership form which may involve providing us with certain personal information to allow us to identify and contact you.

You cannot use another Member's account and you must immediately notify us of any unauthorised, or suspected unauthorised, use of your account, user name or password.

We reserve the right to terminate your Member account for any reason.

5. Forum

We may allow you to access and use communication facilities (**Forums**) on the website to interact with us and other Members. These Forums may allow you to submit comments, pictures, opinions, messages, notices, information or other material (**User Material**) to the Forum.

By submitting User Materials, you automatically grant us an irrevocable, non-exclusive, transferable right and licence to use the User Materials in any manner and in all media (whether now known or later devised) throughout the world in perpetuity, including for commercial purposes. If you have (or any other person has) any moral rights in the User Materials submitted by you, you agree (and have acquired agreement from any other author of that User Material) to not assert moral rights and consent to us using the User Materials in the manner set out in these Terms of Use.

User Material does not reflect our views, information or advice. To the maximum extent permissible by law, we are not responsible for User Material.

We have the right to edit, refuse to post and/or remove any User Materials.

6. Your responsibilities

You are solely responsible for all User Material submitted by you to the website. If you submit User Material, then you promise that:

- you have the right to submit the User Materials and grant the licences referred to above;
- the User Materials will not contravene any laws or infringe the rights of any person;
- the User Materials are not false, untrue, misleading or deceptive, threatening, bullying, offensive, discriminatory, sexually explicit, obscene or contain confidential information;
- the User Materials do not contain a virus or corrupted data or otherwise attempt to interfere with this website.

7. Limitation of liability

To the extent permitted by law, we:

- make no representations or warranties as to the operation or safety of this website or the availability of any product or service described on the website;
- exclude all conditions and warranties of any kind;
- exclude all liability for indirect, incidental, special and/or consequential damages or loss whatsoever arising from your use of the website

Where certain laws (including the *Australian Consumer Law* of the *Competition and Consumer Act 2010*) prohibit the exclusion of conditions and warranties, those conditions and warranties will apply to the extent they cannot be excluded.

8. Disclaimer

Changes in circumstances after publication may affect the accuracy or completeness of the information and therefore we do not warrant the accuracy or completeness of the Material.

8.1. Information on products

The information contained within this website is a general overview. We strongly recommend that you read the relevant FX Product Information Sheet and Material Data Sheet for each of our products and seek additional advice from our stockists or directly from us before use.

While we have made every attempt to ensure that the colours, effects and specifications are as accurate as possible on this website, in-situ finishes may vary depending on specific environmental conditions, surface factors, application techniques and adjacent colours. You should also be aware that colours can differ depending on the calibration and surrounding light of the digital device upon which you view the website.

Always satisfy yourself of the appropriateness of the FX product and its colour by testing it on the area before commencing a project.

8.2. *Distributors and trades persons*

We provide information about distributors and trades persons (including examples of prior work) solely for your general information. We do not give any guarantee as to their qualifications, licences or abilities and, to the extent permitted by law, disclaim any loss incurred by dealing with them. You should satisfy yourself as to their qualifications and suitability.

8.3. *Linked websites and advertising*

The website may contain links to other websites or advertisements for third party products. Such links and advertisements are not recommendations or endorsements by us and we are not responsible for their content. Please refer to the relevant website or advertiser for more information regarding those products and/or services.

9. *Indemnity*

You indemnify us and our affiliates from and against all claims, liabilities, costs and expenses (including legal costs on a full indemnity basis) resulting from your failure to comply with these Terms of Use.

10. *Applicable law*

These Terms of Use are governed by and shall be construed in accordance with the laws of New South Wales and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales.

These Terms of Use are dated September 2018.