



FORMULITE WHOLESALE

Formulite – Wholesale Terms of Sale

IMPORTANT NOTICE FOR WHOLESALERS: You must not remove or obscure any health warning or disclaimer from the packaging of Formulite products.

These Terms of Sale constitute a binding agreement between the Wholesale Customer and Formulite Pty Ltd (ABN 57 987 725 260) (“Formulite”) and apply to the ordering, purchase, fulfilment and delivery of Formulite products (“Products”) from formulite.com.au (the “Website”) on a wholesale basis. By placing an order for Products from Formulite the Wholesale Customer agrees to these Terms of Sale.

Please read the following Terms of Sale carefully before placing an Order.

1. DEFINITIONS

1.1 In these Terms of Sale:

- (a) “Account” means a Wholesale Account created by Formulite through which the Wholesale Customer may make purchases of Products via the Website;
- (b) “Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended or replaced from time to time;
- (c) “Delivery Fee” has the meaning given in Clause 3.3;
- (d) “Order” means an order for Products, placed via the Website;
- (e) “Password” means the password needed to access the Account;
- (f) “Product” means any Formulite product made available for purchase by a Wholesale Customer;
- (g) “Website” means <https://formulite.com.au>;
- (h) “Wholesale Application Form” means the application form under which a person may apply to become a Wholesale Customer; and
- (i) “Wholesale Customer” means a person who has been approved by Formulite to make purchases of Products on a wholesale basis as identified in the relevant Wholesale Application Form.

2. WHOLESALE CUSTOMER ACCOUNTS

- 2.1 Wholesale Customers must be approved by Formulite prior to being able to purchase Products on a wholesale basis.
- 2.2 Prospective Wholesale Customers must complete the Wholesale Application Form and agree to be bound by these Wholesale Terms of Sale.
- 2.3 The Wholesale Customer warrants to Formulite that all information provided by the Wholesale Customer in the Wholesale Application Form and otherwise in respect of the purchase of Products by the Wholesale Customer is complete, true and accurate.
- 2.4 Upon receipt of the completed Wholesale Application Form Formulite will make a determination as to whether the applicant qualifies as a Wholesale Customer. If so, Formulite will create an Account for the Wholesale Customer and will notify the Wholesale Customer of the Account and Password details.
- 2.5 The Wholesale Customer must keep the Account and Password details confidential and secure.
- 2.6 The Wholesale Customer must notify Formulite immediately if it becomes aware of any actual or potential unauthorised use of its Password or Account. The Wholesale Customer indemnifies Formulite in respect of any loss or damage Formulite suffers as a result of the Wholesale Customer's failure to notify in accordance with this Clause.

3. PRICING & TAXES

- 3.1 Prices for Products are as shown on the online Wholesale Order Form located under the "Accounts" tab of the Website.
- 3.2 Formulite reserves the right to change the prices of Products at any time without notice. The price displayed at the time that an Order is placed will continue to apply to the Order even if the price changes before the Order is accepted by Formulite.
- 3.3 In addition to the price for the Products, the Wholesale Customer must pay the advertised delivery fee (if any) ("Delivery Fee"). Any Delivery Fee will appear in the shopping cart prior to the purchase being finalised.
- 3.4 By placing an Order the Wholesale Customer agrees to pay the price for the Products and any associated Delivery Fee.
- 3.5 All prices and Delivery Fees quoted are in Australian dollars and are inclusive of GST.

4. ORDERS

- 4.1 The Wholesale Customer acknowledges that all Products that the Wholesale Customer Orders are intended for wholesale purposes only. For the avoidance of doubt the Wholesale Customer must not resell any Products to any person other than a retail consumer.
- 4.2 Unless otherwise agreed with Formulite in writing, all Orders must be placed

via the Website. The Wholesale Customer can place an Order by following the instructions on the Website.

- 4.3 An Order submitted by the Wholesale Customer is an offer by the Wholesale Customer to purchase the Products for the price plus the Delivery Fee as shown at the time of submission of the Order. Formulite may accept or reject this offer in its absolute discretion.
- 4.4 Each Order that the Wholesale Customer places will, if accepted by Formulite, be a separate and binding agreement between the Wholesale Customer and Formulite with respect to the supply of the relevant Products, in accordance with these Terms of Sale.
- 4.5 The Wholesale Customer warrants to Formulite that all information provided by the Wholesale Customer in relation to each Order is complete, true and accurate.
- 4.6 The Wholesale Customer must check Order details carefully before submission as Orders may not be able to be changed or cancelled once the Order has been accepted by Formulite. Formulite will use reasonable endeavours to cancel or change the Order if it has not already been shipped but makes no representation that it will be able to do so.
- 4.7 Where the Wholesale Customer places separate Orders the Products will be delivered separately and a separate Delivery Fee will apply to each Order (where applicable).
- 4.8 Where the Wholesale Customer orders more than one item in one Order, all Products comprising the Order will be dispatched together where practicable.
- 4.9 Formulite does not guarantee the availability of the Website at any time. The Wholesale Customer acknowledges that the internet may be an insecure network. At times the facility to place Orders may not be available, an Order might not be received, an Order may be lost or misdirected, or an Order might be delayed. Formulite will not be liable to the Wholesale Customer in the event that any of the foregoing occur and the Wholesale Customer releases Formulite from any and all such liability to the fullest extent possible at law.
- 4.10 Formulite does not warrant that the Wholesale Customer's access to the Website or the material on the Website or the process of placing an Order will be free from errors, defects, bugs or viruses, uninterrupted, or reparable if damaged or impaired.

5. ORDER PROCESSING AND PAYMENT

- 5.1 When the Wholesale Customer submits an Order and the Order is accepted by Formulite the Wholesale Customer will receive an Order number and confirmation of the Order details via e-mail.
- 5.2 Formulite will process payment for each Order when, or shortly after, the Order is placed. An Order is deemed to be accepted by Formulite at the time that Formulite processes payment in respect of the Order, however Formulite may, in certain circumstances, cancel an Order after acceptance as set out in

these Terms & Conditions. In the event that Formulite cancels an Order having already processed payment, it will refund payment in accordance with Clause 11.

- 5.3 When Formulite accepts an Order such acceptance constitutes an agreement by Formulite to supply the Products to the Wholesale Customer in accordance with the relevant Order, subject to receiving payment and subject to these Terms of Sale.
- 5.4 Payment terms will be agreed between Formulite and the Wholesale Customer from time to time. Unless otherwise agreed the Wholesale Customer must pay for Products by credit card (Visa or Mastercard) or PayPal account at the time of purchase. By providing credit card details the Wholesale Customer authorises Formulite to charge the price and the applicable Delivery Fee to such card.
- 5.5 Formulite may agree with a Wholesale Customer that Formulite will invoice the Wholesale Customer for Products at the time of dispatch. Invoices are payable within 15 days of the date of issue unless otherwise agreed.
- 5.6 Formulite reserves the right to change the payment methods that can be used for Orders at any time in its absolute discretion.
- 5.7 Formulite may not be able to, or may decline to, accept payment from a Wholesale Customer by its nominated payment method at any time for any reason including, without limitation: (a) where Formulite's fraud detection systems detect possible irregularities; (b) because the Wholesale Customer's financial institution has declined payment; or (c) because the Wholesale Customer's payment card has expired. Where this is the case, Formulite reserves the right to cancel the Wholesale Customer's Order and/or place the Wholesale Customer's Order on hold and request that the Wholesale Customer to provide additional information (for example, proof of identity documents) or arrange payment by another method.
- 5.8 If a Wholesale Customer:
 - (a) is required to make payment at the time of purchase Products will not be dispatched until the Wholesale Customer's payment for the Products has cleared. If the Wholesale Customer's payment cannot be processed, the Order will be rejected and Formulite will notify the Wholesale Customer by email; or
 - (b) is invoiced at the time of dispatch Products will not be dispatched if any invoiced amounts are overdue as at the date the relevant Order is made.
- 5.9 Formulite will not charge delivery fees on Orders in excess of \$500 of Products.

6. CANCELLATION OF ORDERS

- 6.1 Formulite reserves the right to cancel, at any time before delivery and for whatever reason, an Order that it has previously accepted. Formulite may do

this for example, but without limitation, where:

- (a) an event beyond Formulite's control, such as storm, fire, flood, earthquake, terrorism, power failure, war, strike or failure of computer systems, means that Formulite is unable to supply the Products within a reasonable time; or
- (b) Products ordered were subject to an error on the Website, for example, in relation to a description, price or image, which was not discovered prior to the Order being accepted.

6.2 The Wholesale Customer may cancel an Order where Formulite:

- (a) has breached a material term of this Agreement and has not remedied the breach within 5 business days of being notified of the breach;
- (b) notifies the Wholesale Customer that Formulite is not able to ship an Order within 14 days of the date of the Order, other than where the Wholesale Customer is wholly or partly responsible for such delay, such as where the Wholesale Customer has failed to provide the correct delivery address or to pay for the Products.

6.3 Where Formulite cancels an Order after acceptance it will send the Wholesale Customer an e-mail notifying the Wholesale Customer of cancellation.

6.4 In the event of Formulite or the Wholesale Customer cancelling an Order after payment has been processed, Formulite will refund any money paid in respect of that Order. Refunds will be provided in accordance with the terms of Clause 11.

7. AVAILABILITY OF PRODUCTS

7.1 Formulite cannot guarantee Product availability at all times. The Wholesale Customer acknowledges that, from time to time, certain Products may be out of stock or unavailable. Formulite will use reasonable efforts to update its Website to indicate that a Product is unavailable. Formulite reserves the right to withdraw or suspend from sale any Products displayed on the Website, either temporarily or permanently, at any time without notice to the Wholesale Customer.

8. DELIVERY

8.1 Formulite does not sell or deliver products to locations outside Australia.

8.2 Formulite will use reasonable efforts to ensure that Orders are dispatched within five (5) days of receipt of payment in respect of the relevant Order.

8.3 Risk and title in Products passes to the Wholesale Customer on the date and time of delivery of the Products to the delivery address provided in the relevant Order.

8.4 Products delivered to Wholesale Customers will only be delivered to street addresses within Australia. Formulite does not represent that it is able to

deliver Products to all addresses within Australia and may cancel an order where delivery is not reasonably possible. Formulite does not deliver wholesale orders to PO Boxes.

- 8.5 Following dispatch of an Order, Formulite will email the Wholesale Customer with confirmation of dispatch and an invoice for the Order.
- 8.6 On delivery the Wholesale Customer may be required to sign a proof of delivery document. If the Wholesale Customer is not available to take delivery, the Products will be taken to a local depot and Formulite will be notified of the failure to deliver. Formulite will then contact the Wholesale Customer to arrange an alternative delivery time.
- 8.7 If the Wholesale Customer requires an Order to be re-directed to an address which is not the original Order address Formulite may charge a reasonable fee for doing this. Formulite is not able to amend the delivery address for an Order after it has shipped.
- 8.8 All orders are sent via courier. Please allow 2-5 days from the date of dispatch for metro and capital city delivery and 3-10 days for regional areas. Remote deliveries are subject to local transport schedules and may take longer.

9. DELAY IN AVAILABILITY OR DELIVERY OF PRODUCTS

- 9.1 The Wholesale Customer agrees and acknowledges that:
 - (a) Formulite does not guarantee the delivery or availability of Products within the timeframes set out in Clause 8.8 above or otherwise specified by Formulite or any of its staff;
 - (b) events outside Formulite's control may cause delays, or in some circumstances, prevent Products from being delivered; and
 - (c) delays are particularly likely to occur around Christmas, Easter and public holidays.

10. RETURNS

- 10.1 Products should be checked as soon as they are delivered in order to ensure that: (i) they are what was ordered; and (ii) they are not damaged.
- 10.2 If Products were damaged in transit or are otherwise defective, please contact Formulite at info@formulite.com.au within 7 days of delivery, providing information and evidence (including photographs) of the damage or defect. If Formulite deems (acting reasonably) that the Products are damaged or defective Formulite will request that the Wholesale Customer return the Products to Formulite and under such circumstances Formulite will agree to replace the damaged or defective Products, or issue the Wholesale Customer a refund, at Formulite's election. Refunds will be issued in accordance with Clause 11 below.
- 10.3 When returning Products please provide Formulite with the Order number and the reason for the return.

- 10.4 Wholesale Customers are not entitled to any refund or exchange merely because any packaging is damaged in transit. The packaging exists to protect the Products themselves.

11. REFUNDS

- 11.1 Where Formulite is obliged to refund a payment pursuant to these Terms of Sale, Formulite aims to initiate the refund within 7 days. The time that it takes to actually receive the refund will depend upon how quickly the relevant financial institution processes the refund.

12. FORMULITE'S LIABILITY

- 12.1 Except to the extent otherwise required by law (including, without limitation, the Australian Consumer Law) or as expressly set out in these terms and conditions, Formulite will not be liable to the Wholesale Customer, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of:

- (a) the Wholesale Customer's use of the Website;
- (b) the placing of an Order;
- (c) the unavailability of any Product at any time;
- (d) the cancellation of an Order for any reason; and
- (e) any other matter arising out of or otherwise in connection with these Terms of Sale,

whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise at all.

- 12.2 The purchase of Products may be subject to certain laws including, without limitation, the Australian Consumer Law. Nothing in these Terms of Sale shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) which cannot by law be excluded, restricted or modified. However, Formulite's liability for any breach of such condition or warranty is limited, at Formulite's option, to one or more of the following:

- (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services: the supplying of the services again, or the payment of the cost of having the services supplied again.

- 12.3 To the full extent permitted at law, Formulite is not liable for any loss of profit, loss of revenue, loss of business, loss of bargain, loss of savings, loss of data, loss of goodwill, loss of reputation, the cost of obtaining replacement or

alternative products, or the cost of other remedial measures, or for any indirect, special, economic or consequential loss, arising in connection with any Order, Account, or otherwise under or in connection with these Terms of Sale.

13. PRIVACY

13.1 Formulite's policy on the collection, use and disclosure of personal information is set out in its [Privacy Policy](#). All personal information collected in connection with the creation of an Account and in respect of each Order will be dealt with in accordance with this policy.

14. WEBSITE TERMS

14.1 Use of the Website is governed by the Formulite [Website Terms of Use](#).

15. GENERAL

15.1 These Terms of Sale and the terms of the relevant Order taken together constitute the entire agreement between the Wholesale Customer and Formulite in respect of the sale of the relevant Products.

15.2 Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

15.3 The warranties, indemnities, and obligations of confidentiality contained in these Terms of Sale are continuing obligations and will survive the termination or expiry of these Terms of Sale.

15.4 Formulite may assign this agreement.

15.5 Formulite reserves the right to amend these Terms of Sale at any time on notice to the Wholesale Customer. Any amendment will take effect from the time that the Wholesale Customer is notified of the amendment. The Terms of Sale which apply at the time that an Order is placed are the Terms of Sale that apply to that Order.

15.6 These Terms of Sale are governed by the laws of Victoria, Australia and the Wholesale Customer submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

Last updated: 8 November 2019