

# TERMS AND CONDITIONS

## Payment terms

1. The terms of payment are strictly thirty (30) days (or such a period nominated by the supplier herein) from the end of the month of invoice. Chem-Supply Pty Ltd ABN 19 008 264 211 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.
3. The Supplier reserves the right to vary the terms of payment and to require payment in cash prior to delivery, should the credit worthiness of the Applicant at any time becomes, in the Supplier's opinion, unsatisfactory.
4. Any monies paid by the Applicant shall be firstly applied to the payment of all GST owing by the Supplier and secondly to payment of all interest owing (if any) and thirdly in reduction of the purchase price. Where the monies received are in reduction of the purchase price, they shall be applied to indebtedness for the goods which have been outstanding for the longest period, so that the balance owing at any time shall represent the goods most recently sold and invoiced. The date of the invoice shall be the sole indicator of the date of sale.
5. No amount shall be deemed to be paid unless paid by cash, bank cheque, or credit card or until the Applicant's cheque has been paid by their bank or electronic funds transferred are credited to the Supplier's bank account.

## Delivery of goods

6. The Supplier agrees to make delivery of the goods or arrange transport on behalf of the Applicant at the Applicant's expense in accordance with the Applicant's written instructions.
7. Unless otherwise agreed in writing, the mode of transport can be at the discretion of the Supplier.
8. Dates for delivery are estimates only and subject to the availability of the goods. The Supplier shall not be liable to the Applicant for any delays in delivery.
9. The Supplier accepts no responsibility for loss, damage or non-delivery arising by reason of riot, civil commotion, war, whether declared or not, accident, shortened hours of labour, strikes, lock-outs, storm, flood, fire or any other circumstances beyond the direct control of the Supplier.
10. The Supplier may deliver such portion of the goods as may be currently available and the Applicant shall accept such portion of the goods. Alternatively the Supplier may, by notice in writing, extend the time for delivery or cancel all or part of the Contract.
11. The Supplier may deliver such portion of the goods as may be currently available and the Applicant shall accept such portion of the goods. Alternatively the Supplier may, by notice in writing, extend the time for delivery or cancel all or part of the contract.

## Risk and insurance

12. Risk shall pass to the Applicant, any agent or contractor of the Applicant, whichever is the sooner, immediately on delivery of the goods.
13. The Applicant shall be responsible for insurance of the goods, from the time of delivery, including all risks of loss or damage, to, or deterioration of the goods, from whatever cause.

## Price

14. Unless otherwise stated the purchase price is for delivery ex-works, and includes the cost of basic packaging, but excludes any amount of GST payable under the GST Act.
15. Any variation in cost of labour, materials and/or services, or any additional expense imposed on the Supplier by an enactment of Parliament, or any fluctuations in currency value after the date of the Applicant's purchase order, but prior to the date of delivery, beyond the Supplier's reasonable control, shall be to the Applicant's Account.
16. The Supplier reserves the right to charge the Applicant any costs, charges or expenses that the Supplier may incur on behalf of the Applicant. Including, but not limited to, as a result of transport detention, not caused by, or contributed to by the Supplier, or any special requirements or stipulations of the Applicant not provided for in any purchase order.
17. No reasonable variation or additional charges, as provided in 19 and 20, will constitute a repudiation of the contract capable of acceptance by the Applicant.

## Claims

18. Acceptance of the return of any goods is in the Supplier's absolute discretion, and the Applicant shall obtain prior approval. Any goods, not in its original condition, or otherwise processed, will not be returnable to the Supplier. The Supplier reserves the right to charge a re-stocking and handling fee on goods returned by the Applicant.
19. The Applicant accepts the responsibility on delivery of the goods for checking that the goods are those specified in the purchase order or invoice/carnote.
20. No claim for faulty goods shall be made unless written notice thereof is received within seven (7) days of delivery of the goods, and before they are used, processed, sold or otherwise dealt with. The Supplier's liability to the Applicant shall be limited to the replacement of the goods, or credit the Applicant's account with the cost of the goods.
21. The Supplier shall not be liable for any shortages in the supply of the goods, and the Applicant shall only be entitled to reject any excess over the quantity of goods ordered.

## Jurisdiction

22. The Applicant acknowledges and agrees that this agreement will be governed by the laws of South Australia, and the laws of the Commonwealth of Australia which are in force in South Australia.
23. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
24. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of South Australia and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

25. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
26. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
27. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

28. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

29. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

30. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
31. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.
32. Any purchase order is to be submitted showing an order number and full description of the goods ordered. Any price, description or quantity given, in any quotation, shall be subject to revision if any variation is shown on the purchase order. The Supplier does not accept responsibility for any errors in dimensions, quantities, specifications or otherwise where orders for goods are made other than by a written purchase order.
33. No variations, cancellations or additions on any purchase order, contract or these terms and conditions shall be of any effect unless expressly agreed to in writing by the Supplier.

## Retention of title

34. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
35. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
36. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
37. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 36 hereof unless and until the funds held on trust are remitted to the Supplier.
38. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
39. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 38. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
40. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
41. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 38. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
42. The Supplier is entitled to a general lien on all goods belonging to the Applicant, in the possession of the Supplier (even if such goods have been paid for), for all amounts owing to the Supplier by the Applicant.
43. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

## Limitation of liability

44. If any goods are supplied by the Applicant to the Supplier for further processing, and such goods are lost, damaged or destroyed, the Supplier's liability to the Applicant shall be limited to replacement of such goods, or the amount of an insurance recovery in respect of such goods.

## Warranties

45. Subject to any conditions and warranties mandatory implied by law, and to any conditions and warranties contained herein; all conditions, warranties and representations, on the part of the Supplier, whether express or implied, are hereby expressly negated and excluded.
46. The Supplier shall be under no liability to the Applicant for any loss or damage to persons, or property, or for death or injury, caused by any act, or omission (including negligence) of the Supplier, its servants or agents.
47. Any liability of the Supplier is limited to general damages only. The Supplier shall not be held responsible for any special damages suffered by the Applicant, including, but not limited to, consequential loss, loss of profits, or any unforeseeable damages howsoever arising.
48. Subject to qualifications contained in Competition and Consumer Act 2010, or the Fair Trading Acts. Should the Supplier be liable for breach of a condition or warranty mandatory implied by law, its liability for such breach shall be limited to one of the following, as determined by the Supplier. Namely the replacement of the goods, or the supply of equivalent goods; the repair of the 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.
49. Subject to any legislation or express agreement to the contrary, the Applicant acknowledges that he does not rely on the skill and judgement of the Supplier, its servants or agents, in determining whether the goods to be supplied are fit for any particular purpose. The Applicant further acknowledges that any advice furnished by the Supplier, with respect to the use of the goods, is given on the basis that the Supplier assumes no obligation or liability for advice given or results obtained, all such advice being given and accepted by the Applicant is at the Applicant's risk. The Applicant shall be responsible for ensuring that the goods are not used for any purpose for which they are not suitable.
50. No claim or action shall be maintainable against the Supplier, unless it has been notified in writing, detailing full particulars, setting out the basis of liability and quantum of any claim and providing all documentary evidence in support thereof.

51. Nothing in this agreement 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 any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

#### Applicant's obligations

52. It is the Applicant's responsibility to ensure that all occupational health and safety regulations are observed and other appropriate steps taken in relation to the fitness for purpose, storage, handling and use of the goods. Where information is supplied to the Applicant on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and their clientele. Without prejudice to the foregoing, it is also the Applicant's responsibility to provide safe facilities for the reception of the goods into storage.
53. The Applicant shall not alter, remove or in anyway tamper with any of the trade or other marks, or numbers of the Supplier attached to or placed upon the goods.

#### Cancellation of terms of credit

54. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
55. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

#### Indemnity

56. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

#### Provision of further information

57. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
58. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution).

#### Trustee capacity

59. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - the Applicant has the right to be indemnified out of trust assets;
  - the Applicant has the power under the trust deed to sign this agreement; and
  - the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
60. The Applicant must give the Supplier a copy of the trust deed upon request.

#### Partnership

61. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier.

#### Insolvency

62. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

#### Waiver

63. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

64. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
- under section 95 to receive notice of intention to remove an accession;
  - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - under section 121(4) to receive a notice of enforcement action against liquid assets;
  - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - under section 130 to receive a notice to dispose of goods;
  - under section 132(2) to receive a statement of account following disposal of goods;
  - under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - under section 142 to redeem the goods;
  - under section 143 to reinstate the security agreement; and
  - under section 157(1) and 157(3) to receive a notice of any verification statement.

#### Costs

65. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
66. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

67. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.

- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 38 and 66.
- Secondly, in payment of any interest incurred in accordance with clause 70.
- Thirdly, in payment of the outstanding invoice(s).

#### Taxes and duty

68. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

69. If as a result of:

- any legislation becoming applicable to the subject matter of this agreement; or
- any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

#### Interest rates

70. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

#### Set-off

71. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
72. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

#### Miscellaneous

73. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

74. In relation to the supply of goods, the Supplier's liability is limited to:

- replacing the goods or supplying similar goods;
- repairing the goods;
- providing the cost for replacing the goods or for acquiring equivalent goods; and
- providing the cost for having the goods repaired.

75. In relation to the supply of services, the Supplier's liability is limited to:

- supplying the service again; or
- providing for the cost of having the services supplied again.

76. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

77. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.

78. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.

79. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

80. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

#### Severance

81. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
82. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

#### Variation

83. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

84. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

#### Consent to register

85. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

86. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

#### Entire agreement

87. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

#### Privacy Act

88. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

