

These sales, and all future sales, are made subject to the following Terms and Conditions:

#### **1. GENERAL**

- (a) The expression "the Company" when referred to in these Conditions refers to Catalyst Chemicals Pty Ltd A.C.N 066 069 850, A.B.N 84 066 069 850, its agents and any related bodies corporate as defined in the Corporations Law (if such related body corporate is named as the party making or accepting the order).
- (b) The expression "the Purchaser" means the person, business or company described on the Order or any other contractual documents annexed hereto.
- (c) The expression "Contract" means any contract made between the Purchaser and the Company relative to the Goods and Services described on the order or other contractual documents annexed to it.
- (d) Such Goods and Services shall hereinafter be referred to as "the Goods" and "the Services".
- (e) The terms of the Company's commercial trading policy ("Terms and Conditions of Sale") are incorporated into any Contract of sale with the Purchaser; if not already forwarded to the Purchaser at time of ordering, that policy can be obtained on request to the Company. The following Trading Terms and Conditions apply to all products and services supplied by the Company.
- (f) The Customer's own purchasing Terms and Conditions shall not apply and the sale and purchase of goods or services shall be solely governed by these Terms and Conditions of Sale. The Customer hereby acknowledges that these terms and conditions are paramount and they shall take precedence over any terms and conditions stated on customer purchase orders.

#### **2. WARRANTY & LIMITATION OF LIABILITY**

Except as provided herein,

- (a) The Company shall not be held liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of any Goods supplied by the Company or any Service provided by the Company arising out of the Company's negligence or in any way whatsoever, and all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship are hereby expressly excluded.
- (b) Nothing in these Conditions shall be read or applied 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 *Competition and Consumer Act 2010*) and which by law cannot be excluded, restricted or modified.
- (c) The Company's liability for any breach of a condition or warranty implied by Section 64A of Division 1 of Part 3-2 of Schedule 2 (ACL) of the *Competition and Consumer Act 2010* is hereby limited to:
  - (1) in the case of Goods, any one or more of the following:
    - (i) the replacement of the Goods or the supply of equivalent Goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - (iv) the payment of the cost of having the Goods repaired.
  - (2) in the case of Services:
    - (v) the supplying of the service again; or
    - (vi) the payment of the cost of having the Services supplied again.
- (d) The Purchaser indemnifies the Company, its employees, agents and sub-contractors and shall keep them indemnified against all or any claims of whatsoever nature made in relation to the nature or supply of the Goods by the Company.

#### **3. GOODS**

The Purchaser shall be responsible for checking all Goods to ensure that the correct amount, concentrate levels, specification and type of the Goods has been delivered even where the Company is responsible for delivery of the Goods to the Purchaser's storage facilities. Any shortage, excess or inaccuracy, defects of any of the Goods must be reported to the Company within three (3) days from the date of receipt of the Goods by the Purchaser. Failure to report any such discrepancy or defect within the three day period will result in the Purchaser waiving any right to claim against the Company for any such discrepancy or defect. No return of the Goods shall be accepted for any reason..

#### **4. SERVICES**

Where the Company is to provide a service by delivering the Goods to the Purchaser's premises, the Purchaser shall provide suitable access to on site tanks such that the Company can complete delivery and the Purchaser retains responsibility to ensure the correct amount, concentrate levels and type of the Goods have been delivered. The Purchaser shall indemnify the Company for any loss, damage and/or costs which may be suffered or incurred by the Company or its employees in respect of the provision of Services except to the extent that such damage is directly attributable to the negligence of the Company.

#### **5. CANCELLATION**

No order may be cancelled except with consent in writing and on terms which will indemnify the Company against all loss.

#### **6. DELIVERY**

Promises as to date and time of delivery cannot be guaranteed (except by special arrangement) but all promises of delivery are made in good faith in the light of conditions and circumstances prevailing at the time, however the Company shall not be liable for late deliveries or non-delivery and under no circumstances shall the Company be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery or late installation of the Goods or Service.

#### **7. TITLE & RISK**

The Company reserves the following rights in relation to the Goods until all accounts owed by the Purchaser to the Company are fully paid:

- (1) retention of title in the Goods whereby the Purchaser has possession or control of the Goods but does not acquire title from the Company until the full purchase price of all Goods supplied is paid;
- (2) to enter the Purchaser's premises (or the premises of any associated Company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (3) keep or resell any Goods repossessed pursuant to (2) above.

If the Goods are resold or products manufactured using the Goods are sold by the Purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Company and shall pay such amount to the Company upon request.

Notwithstanding the provisions above, the Company shall be entitled to maintain an action against the Purchaser for the purchase price and risk of the Goods shall pass to the Purchaser upon delivery who should therefore be insured accordingly.

Unless agreed to in writing by the Company, risk in the Goods shall pass to the Customer upon delivery to the Customer or its nominated place of delivery.

#### **8. PPSA**

The Purchaser agrees:

- (a) PPSA shall mean Personal Property Securities Act 2009 (Cth) and terms relating to the PPSA such as Perfection and

Security Interest shall have the same meaning as in the PPSA;

- (b) The Company shall be deemed to have possession of Goods and documents for the purposes of s24 of the PPSA even if the Goods and/or documents are in the possession of the Company's subcontractors, servants or agents.
- (c) The Company shall have a Security Interest in the Goods and documents and irrevocably consents to the registration and perfection of the Security Interest and agrees to do anything reasonably required by the Company to enable it to do so.
- (d) The Purchaser and the Company agree pursuant to s115 of the PPSA to the extent permitted by law to contract out of sections 95, 96, 121-3 and 125 and, to the extent permitted by law, Divisions 3 and 4 of the PPSA.
- (e) Where the Company registers a Security Interest the Purchaser agrees to not permit or consent to (without the consent of the Company) any other Security Interest to be registered in relation to the Goods or documents that would rank ahead of the Company's interests.

#### **9. PRICES**

Prices quoted are those ruling at the date of issue of quotation and are subject to variation in exchange rate and/or material costs and other charges affecting the cost of production and any alterations thereto either before acceptance of or during the currency of the Contract shall be to the Purchaser's account.

Unless otherwise agreed with the Company, payment of the price of the Goods must be made by the Purchaser to the Company within thirty (30) days from month end ('Due Date').

Interest: Without prejudice to any other rights or remedies that the Company may have against the Purchases, the Purchaser agrees that in the event of any default by the Purchaser in payment to the Company in accordance with the terms hereof the Purchaser shall pay the Company interest on the amount outstanding from time to time at the rate of eighteen percent (18%) per annum calculated on daily interest from the due date for payment and all outstanding moneys together with all interest shall be recoverable forthwith from the Purchaser.

#### **10. GOODS AND SERVICES TAX ('GST')**

- (a) GST is not included in the price and if applicable will be additional charge at the rates set by the relevant Government authority.

If any supply made under the Contract is subject to GST, the party who receives the supply the Purchaser must pay the party who makes the supply the Company in respect of that supply an amount sufficient to ensure that the Company retains, after payment of GST, the amount that it would have received had GST not been payable. The Purchaser must pay any amount payable under this clause on the same date as payment must be made for the supply giving rise to the GST. The Company must provide a GST tax invoice to the Purchaser stating the amount of GST payable in respect of the supply to which the GST tax invoice relates;

- (b) Any expression used in clause (a) which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this clause as the Act.

#### **11. FORCE MAJEURE**

- (a) Neither party shall be responsible for failure or delay in the performance of any of its obligations due to Force Majeure.
- (b) The term 'Force Majeure' in this Terms and Conditions of Sale and any Contract means any circumstances where either party, due to an event beyond that party's control, is rendered unable to fulfil any of its obligations under this Contract including, but not limited to, acts of God, war, accidents, strikes, Bio-security emergencies or pandemics, lack of or failure of transportation facilities, shortage of public utilities, common carriers, or raw materials, or by reason of any law, order, proclamation, regulation, ordinance, demand or requirement of any Government or any sub-division, authority or representative of any such Government.
- (c) The Company shall have the right to extend the estimated delivery time by a period sufficient to take account of the relevant event or circumstance, subject to the Company and/or the Purchaser canceling orders where the extension continues for an uninterrupted period of three (3) months.

#### **12. PAYMENT DEFAULT & REMEDY**

The Company reserves the right, without prejudice to use any other remedy it may have, either to terminate the Contract or to suspend future deliveries forthwith by written notice if the Purchaser fails to pay for any delivery on its Due Date.

#### **13. INTERMEDIATE BULK CONTAINERS (IBC)**

IBC's remain the property of the Company and must not be used for any other Commodity than that contained therein at the time of delivery by or from the Company.

A deposit charge is made for IBCs but not for specified drums containing chemical but such IBC's and drums are not sold to the Purchaser and always remain the property of the Company. IBC's and drums are to be returned at the Company's expense in good order and condition to the factory or store of the Company from which they were delivered. IBC's and drums will be deemed to still be in the Purchaser's hands until receipt at such factory or store. All risks whatsoever associated with the deterioration of these IBC's and drums or these IBC's and drums becoming defective rests with the Purchaser absolutely and the Purchaser agrees to indemnify the Company in respect of any IBC's and drums that are not returned in good order or condition to the Company within one (1) month of any demand being made by the Company for the return of the IBC's or drums.

Containers in which goods are delivered and for which a deposit charge is made, remain the property of the Company and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Purchaser to the factory or store of the Company from which the goods were delivered the full amount of the deposit will be repaid to the Purchaser.

Pallets: At all times the Company retains the right of possession of any pallets used for delivery of the goods and the Purchaser agrees to indemnify the Company in respect of any pallets not returned in good order and condition to the Company within 28 days of delivery of the goods with the exception of Chep pallets which can be exchanged or transferred using a Chep account number at time of delivery.

Weight: In the absence of a proven defect in the Company's system of weighing, the weights of goods sold hereunder shall be the last weight determined by the Company's system of weighing prior to delivery.

#### **14. ERRORS AND ADJUSTMENTS**

Errors in the Contract or any invoice shall be corrected and requisite adjustments made between the parties.

#### **15. ACCESS**

The Purchaser irrevocably grants to the Company authority to enter into, forcibly or otherwise, all of the owned and leased premises of the Purchaser for the purpose of inspecting or removing (subject to the terms of the Contract) any Goods supplied by the Company.

#### **16. DANGEROUS GOODS**

The Purchaser warrants to Catalyst Chemicals Pty Ltd that after delivery of the goods and whilst Catalyst Chemicals Pty Ltd retains any interest in the goods or consigned goods (as the case may be) the Purchaser shall comply with all applicable Acts, Licences, Regulations and Laws dealing with the use, transport, unloading and storage of dangerous or hazardous materials. The Purchaser will indemnify the Company in relation to any breach or omission of any or all applicable Acts, Licences, Regulations and Laws dealing with the use, transport, unloading and storage of dangerous or hazardous materials.

#### **17. LAW / INTERPRETATION**

The Contract is to be interpreted according to the laws of the State of Victoria, and Catalyst Chemicals Pty Ltd and the Purchaser agree that the Courts in the State of Victoria shall have exclusive jurisdiction to hear and determine all disputes of and incidental to these terms and conditions, including any claims in respect of monies due to Catalyst Chemicals Pty Ltd pursuant to these terms and conditions, whether on account of debts due, or on account of a claim for damages.

#### **18. MANUFACTURER'S LABELS PREVAIL**

The goods will be delivered to the Purchaser affixed with labels from both the manufacturer and Catalyst Chemicals Pty Ltd. The Purchaser acknowledges that in the event of a conflict in the whole or any part of the information appearing on any warning or information labels, the warnings and information appearing on the label of the manufacturer(s) shall prevail.