

TERMS & CONDITIONS OF SALE

To the fullest extent legally possible, all contracts and dealings between Semal Pty Ltd (ACN 005 056 502 / ABN 34 527 060 773) trading as Consolidated Chemical Co ("**CCC**") (and each subsidiary, affiliate, associated company and related entities and any successors and assigns) and any Customer relating to any goods ("**goods**") or services ("**services**") are subject to the Terms & Conditions of Sale set out below ("Terms") unless CCC and the Customer expressly agree otherwise in writing.

1. Definitions: "Customer" means the party to whom CCC has supplied its goods and services including but not limited to their subsidiary, affiliates, associated companies, related company successors or assigns.
"GST" means any tax or imposition on the supply of goods and services covered by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the "**GST Act**") as amended from time to time.
"Delivery or delivered" means the time when the goods are transported from the premises of CCC by whatever means or when CCC advised the Customer the goods are available for collection.
2. Payment: Unless agreed to the contrary by CCC and the Customer in writing payment for the goods must be made by the Customer:
 - (a) In the case of goods to be dispatched or delivered to an address in Australia, at the end of the month following the month from the date of delivery from the premises of CCC.
 - (b) In the case of goods to be delivered to an address in any other part of the world, payment shall be due upon delivery of shipping documents to the Customer or its agent or such other arrangement as CCC and Customer shall agree upon in writing.
 - (c) If payment is not made on the due date, CCC has the right, without prejudice to any other rights it may have, to suspend delivery of or at its option cancel any contract to supply goods to the Customer.
 - (d) If the Customer defaults in payment of any moneys payable to CCC:
 - (i) CCC may until payment is made in full and without prejudice to any other rights at law or in equity require the Customer to pay interest to CCC on the amount outstanding at the rate of 4% per annum higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) computed upon the period of the default.
 - (ii) The Customer cannot make any reduction from the price of the goods or claim any set off or counter claim against CCC.
 - (iii) CCC its servants and agents may enter the Customers premises without liability for trespass or otherwise repossess goods for which payment has not been made.
3. Interest: will be charged on overdue accounts at the rate prescribed in the *Penalty Interest Rates Act 1983* (Vic) plus 4%.
4. Risk and Title: Even if CCC grants any credit facility and/or extension of time to pay for goods:
 - (a) property in goods shall not pass to the Customer until full payment has been received by CCC of all monies owed and the Customer has met all other obligations in respect of these Terms and all other contracts between CCC and the Customer;
 - (b) until the obligations under clause 4(a) have been satisfied, the Customer acknowledges and agrees that:
 - (i) the goods supplied are held by the Customer as bailee for CCC;
 - (ii) the Customer must store the goods supplied in such a way that it is clear that they are the property of CCC;
 - (iii) the Customer hereby irrevocably gives CCC, its agents and servants, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Customer to search for and remove any of the goods supplied to or in which CCC has property as aforesaid without in any way being liable to the Customer or any person or company claiming through the Customer and if the goods or any of them are wholly or partially attached to or incorporated in any other goods, CCC may where practical disconnect or sever in any way whatsoever as may be necessary to remove the goods;
 - (iv) if the goods are sold, the Customer acknowledges that such a sale is by the Customer as bailee for and on behalf of CCC and the Customer must hold the proceeds of such a sale in a separate account on trust for CCC and identified as such in the books of the Customer;
 - (v) the Customer must not charge the goods in any way nor grant nor otherwise give any interest in the goods while they remain the property of CCC; and
 - (vi) CCC may issue proceeding to recover all outstanding indebtedness to CCC in respect of the goods or any other amounts owing to CCC notwithstanding that ownership may have passed to the Customer;

- (c) the Customer agrees that a certificate purporting to be signed by an officer of CCC identifying goods as unpaid shall be conclusive evidence that the goods have not been paid for by the Customer and of CCC's title thereto;
- (d) the risk in the goods shall pass to the Customer immediately upon delivery of the goods by CCC;
- (e) For the purposes of this clause 4, the Customer authorises CCC to register a security interest as defined by the *Personal Properties Securities Act 2009* ("PPSA") in respect of the credit and / or goods supplied pursuant to these Terms or any other contract between CCC and the Customer. The Customer agrees to execute all documents necessary to create a security interest in the PPSA register and to pay all fees associated with such registration.
5. Implied Terms
- (a) It is acknowledged by CCC that, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010* (Cth) ("**CCA**")), certain statutory guarantees and warranties (including, without limitation, the statutory guarantees under the CCA) may be implied into these Terms and cannot be excluded by law ("**Non-Excluded Guarantees**").
- (b) CCC further acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- (c) Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, CCC makes no warranties or other representations under any contract with the Customer or these Terms. CCC's liability in respect of these warranties is limited to the fullest extent permitted by law.
6. Limitation of liability:
- 6.1 This clause 6 is subject at all times to clause 5 above. Except as required by law, CCC supplies goods without any express or implied representation or warranty, and all implied conditions and warranties relating to the goods are excluded.
- 6.2 Subject this clause 6 and to the extent permitted by law, the liability of CCC and its employees or agents for a breach of a Non-Excluded Guarantee in relation to the supply of goods or services at the CCC's option, will be limited, to:
- (a) in the case of goods:
- (i) the replacement or repair of the goods or the supply of equivalent goods; or
 - (ii) a refund of the goods, or the payment of the costs of replacing or repairing the goods or of acquiring equivalent goods; and
- (b) in the case of services:
- (i) the supplying of the services again; or
 - (ii) a refund of the services or the payment of the cost of having the services supplied again.
- 6.3 Subject to clause 5 ("Implied Terms"), the Customer acknowledges that:
- (a) it does not rely upon and it is unreasonable for it to rely upon CCC's skill or judgment as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired;
- (b) the sale of goods or the provision of services is not a sale of goods or provision of services by description or sample; and
- (c) all goods are sold subject to the manufacturers trading terms and conditions and any warranty of the manufacturer.
- 6.4 Subject to clause 5 ("Implied Terms"), the Customer indemnifies CCC from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by CCC caused by or contributed to by any of the following:
- (a) CCC complying with any instruction of the Customer about the goods;
 - (b) any act or omission occurring after the goods have left the control of CCC;
 - (c) the Customer's, or any third party associated with the Customer, failure to:
 - (i) adequately provide or display safety markings or safety information on or with the goods;
 - (ii) comply with any law about the goods or their use (for example, their sale, marketing, labelling or marking);
 - (iii) take any reasonable precaution to bring to the attention of any potential users of the goods any dangers associated with goods;
 - (iv) take any reasonable precaution to detect any matters in relation to which CCC may become liable in any way (for example, under Australian Consumer Law);
 - (v) provide correct information to CCC; and
 - (vi) immediately advise CCC (in writing) of any changes to the information provided to CCC.

- (d) the Customer making any statement about the goods (for example, about their performance or characteristics) without CCC's approval;
 - (e) the use (or misuse) or operation of the goods by the Customer or any third party; and
 - (f) any negligence or breach of duty by the Customer or any third party or any breach by the Customer of these Terms.
- 6.5 Subject to clause 5 ("Implied Terms") and the remainder of this clause 6, and except to the extent otherwise specified by law CCC, its employees or agents will not be:
- (a) liable for any loss or liability, however caused which may be suffered in connection with the supply of Goods under these Terms; and
 - (b) held liable for incidental, indirect or consequential damages or any kind whatsoever, including damages for loss of opportunity, loss of business, loss of revenue or loss of profits, even if due to the negligence of CCC, its employees or agents.
 - (c) all goods are sold subject to the manufacturers trading Terms and conditions and any warranty of the manufacturer.
7. Returns:
- Subject to clause 5 ("Implied Terms"):
- (a) any return of goods must first be approved by CCC;
 - (b) CCC may elect to accept a return of goods where the goods are in the same order and condition as they were in when supplied to the Customer;
 - (c) where CCC elects to accept a return of goods, the Customer must pay to CCC a re-stocking fee of 15% of the invoice value for the goods; and
 - (d) CCC is under no obligation to provide a refund for goods purchased.
8. Orders:
- The Customer agrees that:-
- (a) each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
 - (b) when any order is placed, the Customer shall inform CCC of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create or constitute an inequality of bargaining position, the taking of an unfair advantage of CCC and to be unconscionable, misleading and deceptive.
9. Purchase Price: The price to be paid by the Customer to CCC for the goods shall be the price provided to the Customer by CCC at the time of ordering the goods, unless otherwise agreed by CCC and the Customer.
10. Delivery:
- (a) Subject to clause 5 ("Implied Terms"), delivery dates given by CCC are approximate only and CCC accepts no responsibility or duty to deliver. However, CCC may elect to arrange delivery at its discretion at the Customer's cost;
 - (b) CCC will not be liable for any claim loss or expense sustained or incurred by any person arising out of or as a consequence of or as a result of any delay, failure or inability to deliver or install the goods;
 - (c) delivery discrepancy claims must be notified to CCC within 7 days after receipt of goods;
 - (d) the Customer will be charged for any frustrated delivery or installation to an amount equal to CCC's costs of attempts to make delivery of the goods; and
 - (e) the Customer must accept and pay for the goods even if CCC deliveries late.
11. Entire Agreement:
- These Terms constitute the entire agreement between CCC and the Customer and supersede all prior representations, contracts, statements and understandings whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may seek to impose.
12. Recovery Costs: The Customer shall pay all costs and expenses incurred by CCC, its legal advisers, mercantile agents and others in respect of anything instituted or being considered against the Customer, whether for debt, possession of any goods or otherwise.
13. Jurisdiction: these Terms and any contracts made between CCC and the Customer are governed by the laws of the State of Victoria. CCC and the Customer agree to submit to the exclusive jurisdiction of the Courts of Victoria.
14. Credit Limit: The grant of any credit facility and/or the nomination of any credit limit is an indication only of CCC's intention at that time and CCC may vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other person or entity.
15. Force Majeure: CCC is not liable for any failure to comply with these Terms or any other agreement

for the sale of goods or services if the failure to comply (directly or indirectly) arises by virtue of a Force Majeure Event. For the purposes of this clause 15, a "Force Majeure Event" is an event that is taken to be beyond the reasonable control of CCC including (but without limitation) strikes, lock outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any other direction of any local, state or federal government, government authority or instrumentality. CCC is not obliged to remedy such circumstances in respect of a Force Majeure Event. Nothing in this clause 15 releases the Customer from any obligations to pay CCC in accordance with these Terms, or otherwise comply with these Terms.

16. Disputes: The Customer agrees to pay into a trust account (earning market interest) in the joint names of CCC and the Customer any amount claimed by CCC as a condition precedent to disputing any such claim on the basis that upon resolution of the dispute the trust funds and any interest shall be dispersed according to the resolution. This Clause shall operate as a bar to any defence and/or counterclaim by the Customer until complied with.
17. Customer Breach of Terms: Upon any default or breach by the Customer of these Terms, CCC may (inter alia) retain all monies paid and/or cease further deliveries and/or recover from the Customer all loss of profits arising and/or at CCC's discretion take immediate possession of any product not paid for, without prejudice to any other of its rights and without being liable in any way to any party.
18. Severability: Any part of these Terms being a whole or part of a clause shall be capable of severance without effecting any other part of these Terms.
19. GST: To the extent that a supply of services provided by CCC, or any other supply, made under or pursuant to this agreement, is a "taxable supply" as defined in any GST Regulation, CCC will increase its price in respect of that supply it makes by the amount of GST applicable to the supply.
20. Customer Warranty: The Customer warrants to CCC that any patent registered design, trade mark, copyright or other intellectual property right involved in the order placed by the Customer is not and does not infringe any rights of any other party and the Customer hereby indemnifies CCC against all actions, proceedings, claims, demands, damages, costs and expenses which may be brought against CCC or for which CCC may sustain any loss or cost by reason of such infringement.
21. CCC's Rights: Any right that CCC may have under these Terms is in addition to, and does not replace or limit, any other right that the CCC may have.
22. Assignment: the Customer must not assign its benefits or obligations under these Terms without the prior written consent of CCC in writing. CCC may assign its rights and obligations under these Terms to another person without the consent of the Customer.
23. Variation: CCC is entitled to vary these Terms at any time by providing the Customer 14 days prior written notice.