

IMCD AUSTRALIA PTY LTD TERMS AND CONDITIONS OF SALE

Version 30/01/2012

Article 1

In these conditions and in any contract to which these conditions apply:

(a) "the Seller" means IMCD Australia Pty Ltd (ACN 000 005 578) or such other company being a related body corporate of IMCD Australia Pty Ltd or a related body corporate of its parent or holding company.

(b) "the Buyer" means the person or entity who buys or has agreed to buy the Goods. The expression "the Buyer" shall also mean the "grantor" as defined under the Personal Property Securities Act 2009.

(c) "the Goods" means any item of whatsoever nature which is sold by the Seller (including Consignment Stock) and unless the context otherwise requires, includes services of whatsoever nature which are provided by the Seller, and

(d) "the Purchase Price" means the price of the Goods as stated on the relevant sales quotation given (in writing or verbally) to the Buyer in connection with the sale of Goods and as stated on the Seller's invoice plus GST as applicable. The Seller shall be entitled to adjust the Purchase Price whether before or after delivery of the Goods in the event and to account for: interest for liquidated damages, demurrage, increases in costs of transport or insurance, rates of any applicable taxes, Customs duty charges or impost, levy or any other charges in respect of the import or export of goods. If the Buyer has any lawful exemption for such costs then such exemption must be submitted within the applicable period otherwise any enforceable costs will be paid by the Buyer.

Article 1.1 GOODS AND SERVICES TAX ACT 1999 AND AMENDMENTS "GST"

- a) Any prices quoted for the Goods by the Seller shall be exclusive of GST. The Seller will indicate the amount of GST payable in respect of Taxable Supplies to the Buyer on the quotation for the Goods.
- b) The Seller will provide the Buyer with a Tax Invoice and the Buyer must pay the GST amount for Taxable supplies concurrently with the price of the Goods.

Article 2 GENERAL

- a) An order may be made by the Buyer either verbally or in writing (including through facsimile, email or any other electronic ordering process) to the Seller; A contract shall be formed by the Seller accepting an order made by the Buyer, or at the Seller's option, by purchasing Goods for on-supply to the Buyer or commencing delivery of the Goods.
- b) Upon formation of a contract, these Terms and Conditions shall constitute the entire agreement between the Seller and the Buyer for the supply of the Goods. Any terms and conditions contained in any purchase order placed by the Buyer are expressly excluded. A demand for variation to the Seller's Terms and Conditions of Sale shall not have any effect unless agreed in writing and signed or directly emailed by an authorised representative of the Seller.
- c) The Seller shall not enquire as to the power or authority of any person purporting to act on behalf of the Buyer and no objections shall be taken by the Buyer with regard to the liability of the Buyer for payment of the Purchase Price on the ground that any such person acted outside their authority in ordering the Goods.
- d) The Buyer agrees to pay damages to the Seller equivalent to its costs incurred and loss of profit plus GST should the Buyer cancel any order or breach the terms and conditions of any supply contract or these Terms and Conditions of Sale.

Article 3 PAYMENT TERMS, DEFAULT AND LIMIT

- a) Unless otherwise agreed by the parties in writing, the Purchase Price shall be paid within thirty (30) days of the date of the Seller's Invoice. The Buyer shall pay all reasonable expenses to the Seller resulting from any debt recovery action against payment default (including but not limited to transportation, storage, debt collection and legal costs) or otherwise in enforcing these terms and conditions of sale.
- b) Time for payment of the Purchase Price shall be of the essence of the contract and if the Buyer fails to pay the Purchase Price when due, the Seller may treat the contract as repudiated by the Buyer or may, until payment in full is made, suspend delivery of the Goods the subject of the contract and any Goods the subject of any other contract with the Buyer without incurring any liability whatsoever to the Buyer in respect thereof. In addition, but without prejudice to such rights of the Seller, the Buyer shall pay compounding interest on a daily balance basis to the Seller on the overdue outstanding Purchase Price at the rate of 13 % per annum until the Purchase Price is paid in full. All moneys owing and outstanding to the Seller on any account whatsoever by the Buyer shall become immediately due and payable at the option of the Seller if any of the following events occur:
- (i) the Buyer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (ii) the Buyer makes a scheme or compromise with its creditors;
- (iii) the Buyer ceases or threatens to cease conducting its business in the normal manner and, whereby changes arise in management control, structure or legal entity of the Buyer;
- (iv) the Buyer or a related company of the Buyer (within the meaning of the Corporations Act 2001) or any Guarantor of the Buyer defaults or breaches any condition or understanding under this contract or any other contract between the Seller and the Buyer or the Seller and the related company.
- c) The Seller can at any time without notice to the Buyer alter or terminate the Buyer's credit limit or terms. The Seller accepts no liability in the operation of this condition.
- d) Any moneys paid by the Buyer shall be firstly applied to payment of all interest owing, secondly to any other costs which are applicable under these terms and conditions and thereafter any residual of the amount paid shall be applied against the Purchase Price of the Goods.

Article 4 CLAIMS

- a) The Buyer shall notify the Seller in writing within seven (7) days of the date the Goods are delivered if the Seller is responsible for any shortfall in or loss or

damage to the Goods delivered (these expressions include Goods which are defective or non-conforming) and shall ensure the Goods are kept intact for inspection by the Seller. Failure to comply with this provision shall, to the full extent permitted by law, disentitle the Buyer to any remedy in respect of the shortfall, loss or damage. The Seller may at its discretion refuse Goods for return for any reason other than the conditions contained herein. Without limiting the provisions of any other condition within these conditions of sale, the Seller's liability with respect to claims shall not exceed the Purchase Price of the Goods. The Seller may at its discretion replace Goods which are the subject of a claim, at no extra cost to the Buyer, and the replacement Goods shall be subject to these terms and conditions.

Article 5 EXCLUSION OF LIABILITY

- a) Unless otherwise agreed in writing (and to the maximum extent permitted by law) the only warranty provided by the Seller in respect of the Goods (if any) is that warranty provided by the manufacturer of the Goods and the liability of the Seller pursuant to such warranty is limited to any amounts received by the Seller from the manufacturer.
- b) To the full extent permitted by law:
- (i) the Seller gives no condition or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or any special use or purpose and the description of the Goods in any contract or other document shall not import any such condition or warranty on the part of the Seller;
- (ii) all statutory and implied conditions and warranties except as to title are excluded; and
- (iii) it is the responsibility of the Buyer to inspect the Goods and satisfy himself as to the condition, quality, suitability and fitness of the Goods for his purposes prior to the use or re-sale of the said Goods. If the Buyer fails to inspect the Goods, he shall have forfeited any right for compensation of any kind and must pay the full Purchase Price of the Goods to the Seller;
- (iv) the Seller assumes no liability (whether for negligence or otherwise) for any technical advice or assistance given or the results obtained therefrom and any such advice is given and accepted at the Buyer's risk;
- (v) the Seller shall be under no liability whatsoever for any defects (including any defect caused by the loading of the Goods) in, or deterioration or failure of, the Goods or any part thereof (or any goods supplied with the Goods or any part thereof) whether due to design, workmanship or materials or to any cause whatsoever unless the same is due to the negligence or wilful default of the Seller or its employees or agents. The Seller shall be under no liability whatsoever for any failure of the Goods (other than in relation to a substantial ingredient of the identity of the Goods) to correspond with any description (including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transport of the Goods);
- (vi) the Seller will not be liable to the Buyer for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply or failure to supply the Goods.
- c) Notwithstanding anything else in these conditions of sale, the Buyer will have the benefit of any liability of the Seller arising under an Act of Parliament to compensate or indemnify the Buyer to the extent to which the liability is prohibited by the Act from being excluded, restricted or modified.

Article 6 INDEMNITY

The Buyer shall comply with all instructions of the Seller in relation to the handling, fitting, installation and use of the Goods and, notwithstanding such compliance, the Buyer shall keep the Seller indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, (including loss of profit) which may be made against the Seller or which the Seller may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such cost, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, the Seller or a duly authorised employee or agent of the Seller.

Article 7 COMPLIANCE WITH LAWS

- a) The Buyer shall comply with all applicable laws including but not limited to laws and conventions relating to (i) competition law, (ii) anti-bribery, and anti-corruption, and (iii) laws relating to export control and customs regulations such as (i) the rules on embargoed countries, (ii) the restrictions on the sale of products to restricted or denied customers, and (iii) the regime for the control of exports, transfer, brokering and transit of dual-use items. The Buyer shall not directly or indirectly utilise, sell, ship or otherwise transfer, the products purchased from the Seller to or through any country, entity or individual as prohibited under national and international regulations.
- b) Without prejudice to the other provisions in this Article, the Buyer shall comply with all applicable laws and regulations in performing its obligations under the Agreement in a manner consistent with the Seller's Code of Conduct. The Buyer confirms to have read and agrees to the Seller's Code of Conduct which is available at the following website: www.imcdgroup.com.
- c) The Buyer shall procure that any third parties to whom the products from the Supplier will be supplied, whether in original form or as intermediate or end-product, are under the same obligations as set out in this Article such that all third parties down the supply chain, as far as the end-user, are under the same strict compliance.
- d) The Buyer agrees to indemnify and hold harmless the Supplier, its officers, employees, agents, and representatives, from and against all damages, losses, liabilities, penalties, costs and expenses, including reasonable attorney fees, as a result of any claim, suit, action, proceeding, demand, judgment or settlement arising out of the Buyer's failure to adhere to the provisions of this Article.

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- Article 8 DELIVERY**
- a) Any time or date named or accepted by the Seller for completion, delivery, dispatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract. The Seller shall not be liable for the consequences of any delay in completion, delivery, dispatch, shipment or arrival of any Goods or any other delay as a result of any cause outside its reasonable control and this includes but is not limited to acts of God, war, riots, strikes, Lockouts, trade disputes, fires, breakdowns, mechanical failures, interruption of transport, government action or by any other cause whatsoever that is outside the reasonable control of the Seller. In any such event, the time for completion, delivery, dispatch, shipment or arrival of the Goods or tender of documents may be extended by the Seller (or the Seller may cancel the contract without liability on its part).
- b) In the event of production of the Goods or any part thereof being hindered or impaired or ceasing for any cause outside the reasonable control of the Seller, the Seller may notify the Buyer that it is unable to fulfil the contract and may cancel the contract without being under any liability whatsoever save for an obligation to return to the Buyer any money received by the Seller in respect of the Goods at that time.
- c) Unless otherwise stated in writing the Seller may make partial deliveries or deliveries by instalments in any amounts it may determine and each such partial delivery or delivery by instalment shall be deemed to be separate contracts and these conditions of sale shall apply to each partial delivery or delivery by instalment.
- d) The Seller may deliver up to ten per cent more or less than the Goods ordered for delivery, subject only to an appropriate adjustment to the price payable, in full satisfaction of the Seller's contractual obligations.
- e) At the Seller's discretion, returnable packages, pallets or containers (hereinafter known as "receptacles") supplied in facilitating delivery of the Goods may be invoiced for their value as a deposit charge in the invoice for the Goods or invoiced separately. The Buyer must return such receptacles within 30 days from date of delivery (unless an alternative written agreement has been made) otherwise the Buyer must pay for the receptacles within 30 days from invoice date.
- Article 9 PROPERTY SECURITIES ACT 2009 (PPSA)**
- a) The Buyer acknowledges it will grant the Seller a security interest (preferably, a Purchase Money Security Interest) in all present and after acquired Goods supplied by the Seller and their proceeds to secure all moneys owing to the Seller now and in the future in respect of the supply of Goods.
- b) The Buyer undertakes to provide any information that the Seller may reasonably require to enable the Seller to perfect and maintain the perfection of the Seller's security interest (including by registration of a financing statement).
- c) The Buyer undertakes to immediately notify the Seller in writing of any changes in the Buyer's name and/or any other change in the Buyer's details (including, but not limited to, changes in the Buyer's address, facsimile number, trading name or business practice). The Buyer will not have the right to transfer any Goods provided by the Seller to any potential purchaser or purchaser of the Buyer's business, unless the Goods are first paid for in full to the Seller.
- d) The Buyer waives (and provides an on-going waiver of) the Buyer's right to receive a verification statement in respect of any financing statement and agree to the extent permitted by law that:
- (i) Where the Seller has rights in addition to, or existing separately from those in Chapter 4 of the PPSA, those rights will continue to apply and in particular, will not be limited by Part 4.3 in Chapter 4; and
- (ii) The rights of the Buyer as debtor under Sections 130, 132, 135 and 137 shall not apply to these terms and conditions.
- e) The Buyer waives the right to receive any notices dealing with the goods and default as far as the law allows.
- f) The Buyer agrees to waive any rights associated with Section 143 of the PPSA so long as sale of the Goods (collateral) by the Buyer to a third party has not occurred.
- g) The Buyer will pay all costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or financing change statement in connection with these terms and conditions.
- h) The Buyer agrees that the Buyer will not allow security interests to be created or registered over the goods in priority to the security interest(s) held by the Seller.
- i) The Buyer agrees to allow a the Seller to register a security interest over the security interest that the Buyer may have over third parties so far as the law allows.
- j) The Buyer agrees that in the event of external administration of the Buyer, the Buyer will disclose the quantity/volume of the Seller's Goods which are in manufactured/commingled/mixed goods or otherwise which may be work in progress as at the date of appointment of the external administrator.
- k) In respect of the PPSA, Goods means all goods that the Seller supplies to you from time to time, provided that:
- (i) (but solely for the purpose of the application of the PPSA) where the goods supplied are the Buyer's inventory, then all references to Goods in these terms and conditions shall in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (ii) where the goods supplied are not, or are no longer held as, the Buyer's inventory, then all references to Goods in these terms and conditions shall, in respect of those goods mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Seller and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Buyer, incorporated in, and form part of these terms and conditions, and
- (iii) unless the context requires otherwise, includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.
- l) As far as the PPSA allows, Property and ownership in the Goods will not pass to the Buyer but will remain in the Seller until payment in full of the Purchase Price of the Goods and all other amounts owing is made to the Seller by the Buyer.
- m) Any risk in the Goods will pass at the time of delivery and the Buyer must insure the Goods.
- n) In the event that the Buyer defaults under these terms and conditions, the

Seller may in accordance with clause 123 of the PPSA seize the Goods and in accordance with clause 125 of the PPSA retain or dispose of the Goods. Divisions 3 and 4 under Chapter 4 of the PPSA will provide the rights of the Seller in respect of retaining or disposing of the Goods.

- o) In so far as the PPSA allows, the Buyer acknowledges that if it mixes the Goods with other products or items or that the Goods are no longer separately identifiable, the Buyer and Seller will be owners in common of the new product and thereafter each party will have a right to share in any proceeds of sale. The proceeds of sale will be divided between the Buyer and Seller in accordance with their own respective value of contributed product or ingredient.
- p) The authority of the Buyer to sell the Goods does not extend to the making of any warranties or conditions which exposes the Seller to liability to another person (except as to the price, the terms of payment and like provisions) and the Buyer must ensure that to the full extent permitted by law all conditions, warranties implied or imposed by law are excluded and where such a condition cannot be excluded that the Seller's liability is limited to the full extent permitted by law.
- q) In the event that the Buyer is in default of payment for Goods, the Seller has the right to appoint a receiver, manager, administrator under the Corporations Act 2001.
- r) The conditions of this clause 9 apply notwithstanding any arrangement between the parties under which the Seller grants the Buyer credit.

Article 10 HEALTH AND SAFETY

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and, where information is supplied to the Buyer on potential hazards relating to the Goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. It is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage.

Article 11 PROPER LAW AND JURISDICTION

All contracts made between the Seller and the Buyer in Australia shall be governed by and construed in accordance with the laws of the State of Victoria. The Buyer agrees to submit to the jurisdiction of the Victorian courts for all purposes of or in connection with such contracts.

Article 12 INTELLECTUAL PROPERTY RIGHTS

The Buyer shall not alter, remove, conceal or in any way tamper with any of the trade marks or numbers on or affixed to the Goods as supplied by the Seller.

Article 13 RESUPPLY / MODIFICATIONS

The In connection with the supply of Goods:

- a) the Buyer shall not make any false representations as to the suitability of those Goods for a particular purpose, the description of those Goods, their merchantable quality or any other representation which will constitute a breach of any condition or warranty implied by law; and
- b) the Buyer shall distribute to every customer any warnings, instructions and like information relating to those Goods which the Seller has provided to the Buyer.
- c) Where the Buyer resupplies the Goods, the Buyer shall not in any way without the consent of the Seller interfere with the Goods or change the composition or appearance of the Goods. The Buyer shall not conceal, remove or otherwise interfere with any warnings, labels or other markings on or affixed to the Goods.

Article 14 LICENCES AND CONSENTS

The obtaining and maintenance in full force and effect of any necessary export or import licences, authorisations or consents in respect of the Goods is the sole responsibility of the Buyer. The Seller shall be under no liability in respect of Goods exported or imported without any necessary licences, authorisations or consents.

Article 15 MISCELLANEOUS

- a) The headings of these conditions of sale are provided for convenience only and shall have no effect on the interpretation thereof.
- b) If at any time the Seller does not enforce any of these terms and conditions or grant the Buyer time or other indulgence, the Seller shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- c) If a provision or part of a provision is illegal, void or unenforceable the remainder of the provision and all other provisions will continue in full force and effect.

Article 16 COMPETITION AND CONSUMER ACT 2010

- a) Where these terms and conditions would otherwise be subject to the Competition And Consumer Act 2010 ("Act"), you agree that you are acquiring the Goods for business purposes and that the Act does not apply to the supply of the Goods to you.
- b) If you are a consumer as defined in section 4B of the Competition and Consumer Act 2010, and you have not contracted out of the Act under clause 16(a) above, nothing in these Terms and Conditions will limit any rights you may have under the Act.