

Article 1 - GENERAL

Definitions:

Agreement:	means any agreement and/or legal act between IMCD and the Purchaser in connection with the purchase of products by the Purchaser from IMCD.
Business Day:	means a day (other than a Saturday, Sunday or a public holiday) when banks in Australia are open for business.
Goods:	means any item of whatsoever nature which is sold by IMCD (including consignment stock) and unless the context otherwise requires, includes services of whatsoever nature which are provided by IMCD.
GST:	means any tax or imposition on the supply of Goods covered by A New Tax System (Service and Services Tax) Act 1999 (Cth) ("the GST Act") as amended from time to time.
IMCD:	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.
Intellectual Property Rights:	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Purchaser:	any legal or natural person that wishes to conclude, concludes or has concluded an Agreement with IMCD, as well as any legal or natural person to which IMCD supplies or has supplied products.
Terms and Conditions:	means these general terms and conditions of sale of IMCD as varied from time to time by notification in writing by IMCD to the Purchaser.

- 1.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to all offers and quotes from IMCD, to the Agreement and to all acts and legal acts between IMCD and the Purchaser to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, including the Purchaser's standard terms and conditions of purchase (if applicable)
- 1.2 Departures from these Terms and Conditions are only valid if they were expressly agreed in writing and signed by the duly authorised representatives of both the Purchaser and IMCD.
- 1.3 The text of the Agreement shall prevail over these Terms and Conditions in the event of a conflict.
- 1.4 IMCD may amend these Terms and Conditions at its sole discretion and the Purchaser shall be bound by the latest version of these Terms and Conditions. The latest version of these Terms and Conditions may be found online at <https://www.imcdgroup.com/sales-conditions>.
- 1.5 Our minimum order value is \$1,500.00. Orders below this amount may incur an additional fee of \$250.00. We reserve the right to apply or waive this fee at our discretion based on customer status, order volume, or special promotions. Terms are subject to change without prior notice.

Article 2 - OFFERS AND AGREEMENTS

- 2.1 All offers, quotes and price proposals from IMCD shall be subject to these Terms and Conditions at all times and may be revoked at any time prior to the Purchaser's acceptance thereof, regardless of whether they contain a period for acceptance.
- 2.2 An Agreement shall come into existence upon timely written acceptance by the Purchaser of IMCD's offer, quotation or price proposal, as applicable. The Agreement shall exist on the basis of these Terms and Conditions, which the Purchaser is deemed to have accepted upon acceptance of IMCD's offer, quotation or price proposal, as applicable. IMCD shall be entitled to rely on the accuracy of any information provided by the Purchaser for the purposes of providing an offer, quotation or price proposal, including but not limited to the description and quantity of products.
- 2.3 The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of IMCD which is not set out in the Agreement.
- 2.4 Samples, images, descriptive matter and models shown or provided shall serve as indications and are provided for illustrative purposes only, without the products having to comply with those samples, images, descriptive matter and models. Minor variations in stated size, weight, number, colour and other product properties shall not be considered to be defects. Commercial practice shall determine whether variations are minor.
- 2.5 IMCD shall be entitled at all times, before starting or continuing its performance, to require security from the Purchaser for the fulfilment of any of its obligations under any Agreement. The security shall be provided in the manner stipulated by IMCD in its sole discretion.
- 2.6 If the Purchaser has not provided security within fourteen (14) days of a request to that effect, in the manner stipulated by IMCD, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.

Article 3 - DELIVERIES

- 3.1 Unless expressly agreed otherwise in writing, the delivery of products shall be ex-works at such premises as IMCD may designate to the Purchaser in writing, from time to time (Incoterms EXW).
- 3.2 Delivery shall take place in accordance with the definitions of the latest version of the Incoterms 2020 as amended from time to time by the International Chamber of Commerce (ICC). In the event of a conflict between these Terms and Conditions and the Incoterms, the Incoterms shall prevail.
- 3.3 The risk attached to the products purchased shall pass to the Purchaser at the time of delivery. The time of delivery is the time that the products purchased arrive at the place of delivery, even if the Purchaser does not accept the delivery. For delivery ex-works, the time of delivery is the time that IMCD notifies the Purchaser in writing that the products purchased are ready for collection.
- 3.4 Unless expressly agreed otherwise in writing, the delivery date, time or period specified are approximate only and time shall not be of the essence. The mere fact that IMCD exceeds the delivery date, time or period provided to Purchaser shall not constitute a breach of the Agreement, shall not result in default or any liability to the Purchaser and shall not entitle the Purchaser to terminate the Agreement or to any other remedy for breach of contract.
- 3.5 If a delivery period has not been expressly provided, the Products shall be delivered within a reasonable period.
- 3.6 IMCD shall have the right at all times to deliver in consignments and shall always be entitled to invoice for such partial performances separately.
- 3.7 If the Purchaser does not accept delivery, or in the case of ex-works delivery does not collect the products delivered within seven (7) days after delivery and/or in the manner stipulated by IMCD, the Purchaser shall be in default without notice of default being required, and IMCD shall in any case be entitled to invoice for and receive the agreed price. IMCD shall then also be entitled, without prejudice to its other rights under applicable

law, to store the products at the Purchaser's expense and risk, all costs arising therefrom, including but not limited to increases in duties, levies, premiums, taxes and charges, shall be payable by the Purchaser.

- 3.8 If a situation provided for in Article 3.7 arises, and, despite being given a reasonable time by IMCD, the Purchaser still fails to accept/collect the products or fails to do so in time, IMCD shall, without prejudice to its other rights under applicable law, these Terms and Conditions and/or the Agreement, be entitled to:
- a) store the products until actual delivery/collection and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; and/or
 - b) sell the products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for any excess over the price paid by the Purchaser (if any) or charge the Purchaser for any shortfall below the price under the price specified in the Agreement.

Article 4 - PRICES AND TAXES

- 4.1 Unless expressly agreed otherwise in writing, all prices shall be ex-works. All prices shall be exclusive of GST, the costs of transporting and/or dispatching the products, other costs incurred in connection with delivery, government levies and/or taxes payable. IMCD shall indicate the amount of GST payable in respect of Taxable Supplies to the Purchaser in the quotation for the products. IMCD will provide the Purchaser with a Tax Invoice and the Purchaser must pay the GST amount for Taxable Supplies concurrently with the price of the products.
- 4.2 IMCD shall be entitled at all times to change its prices, on condition that prices specified in the Agreement may be changed only if the cost-determining factors on which the prices are based have changed since the Agreement was concluded and prior to delivery. Such price adjustments shall be notified to the Purchaser but shall not entitle the Purchaser to terminate the Agreement. Such cost-determining factors include without limitation raw material prices, labour costs, social security costs, taxes (including GST and other government levies), import and export duties, any request by the Purchaser to change a collection/delivery date, any request by the Purchaser to change quantities or types of products ordered; or any delay caused by any instructions of the Purchaser in respect of the products or failure of the Purchaser to give IMCD adequate or accurate information or instructions (if applicable) and exchange rate fluctuations.

Article 5 - TRANSPORT EQUIPMENT AND PACKAGING

- 5.1 Unless otherwise agreed, returnable packaging provided by IMCD shall remain the property of IMCD at all times and shall be returned to IMCD in perfect condition after use at Purchaser's sole cost and expense. Additionally, Purchaser shall, unless otherwise agreed in writing, provide to IMCD a deposit, in the amount advised by IMCD, to cover the return of packaging used to transport the products to the Purchaser. If the returnable packaging is not returned in perfect condition, IMCD shall no longer be obliged to take back the returnable packaging, and the deposit charged shall not be returned to the Purchaser. Furthermore, the deposit shall be forfeited, if returnable packaging provided by IMCD is not returned after two years. Only if the returnable packaging concerns intermediate bulk containers, the Purchaser shall be charged a reasonable rent from thirty (30) days after delivery, in addition to the deposit. This rent shall be charged and invoiced to the Purchaser after the intermediate bulk containers have been returned to IMCD. IMCD shall have the right to deduct the rental charges from the deposit.
- 5.2 The loading or filling of transport equipment and/or packaging made available by the Purchaser shall take place at the Purchaser's expense and risk. If IMCD should nonetheless be liable, the provisions of Article 8 of these Terms and Conditions shall then be applicable.
- 5.3 IMCD shall have the right to refuse to load equipment and/or fill packaging if it does not comply with the reasonable safety requirements set by IMCD from time to time. In that case, IMCD shall not be liable for any costs arising from a possible delay. Costs shall also be understood to include the costs referred to in Article 3.7.

Article 6 - RETURNS, COMPLAINTS AND REMEDIES

- 6.1 Without prior written consent on its part, IMCD shall not be obliged to accept returns from the Purchaser. If products are returned without the prior written consent of IMCD, their dispatch and storage after their return shall be at the Purchaser's expense and risk.
- 6.2 IMCD may at its discretion refuse the Goods for return for any reason other than the conditions contained herein. Without limiting the provisions of any other condition within these terms and conditions, IMCD's liability with respect to claims shall not exceed the Purchase Price of the Goods. IMCD may at its discretion replace the Goods which are the subject of a claim, at no extra costs to the Purchaser, and the replacement Goods shall be subject to these terms and conditions.
- 6.3 The risk in returned products shall continue to be borne by the Purchaser until IMCD has accepted the return and the returned products in writing, to which acceptance IMCD may attach conditions.
- 6.4 As an essential part of any Agreement and a basic principle of these Terms and Conditions, the Purchaser acknowledges and expressly accepts to be obliged to check the conformity of the products during their delivery, pointing out any visible non-conformity - including but not limited to quantity, quality, documentation and labeling on the delivery note which shall be signed by the carrier. In the absence of such (signed) notice, the products shall be deemed definitively accepted free of such non-conformity and the Purchaser cannot claim any subsequent non-conformity of the delivered products, that should have been discovered with due care during delivery.
- 6.5 Moreover, the Purchaser has a further essential and material contractual duty to - immediately (i.e. without undue delay) and in any event prior to any use and/or reselling - test and effectively evaluate, among others, whether: (i) the products (including samples and models) meet the specifications, as provided by IMCD; (ii) the products and/or any related technical support and information, as provided by IMCD, are suitable for Purchaser's intended uses and applications. The Purchaser's obligation to inspect, test and evaluate the delivered products as described herein shall, among others, consist out of an application-specific analysis and shall, at least, include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. The Purchaser in breach of these obligations cannot claim any consequent non-conformity and/or defects of the delivered products.
- 6.6 The Purchaser is obliged to notify IMCD of any discovered defect immediately in writing with a description of the defect. Immediateness means that defects are notified at the latest within seven (7) working days after delivery or - in the case of a latent defect (i.e. a defect which was not recognisable during the inspection) - at the latest within three (3) working days after discovery of the defect. The limitation period for claims for latent defect is three (3) months from the delivery. A shorter limitation period shall apply if and to the extent (i) agreed between the parties and permitted by applicable laws, or (ii) the shelf life or the expiration date of the products - in accordance with the specifications or labels on products - is shorter than three (3) months. Further, the Purchaser must grant IMCD access to the defective products for IMCD's own examination of the defective products, for which the Purchaser, at its own expense, must store the products properly and in the original packaging until such examination. The Purchaser in breach of these obligations cannot claim any consequent non-conformity and/or defects of the delivered products.
- 6.7 Submitting complaints shall not release the Purchaser from its payment obligations.

- 6.8 If complaints are submitted in time and in accordance with these Terms and Conditions, and IMCD is reasonably of the opinion that the complaint is justified, IMCD shall be free to choose either to deliver what is lacking, or to redeliver the products found to be unsound free of charge, or to grant a discount on the price. By performing in one of the stated ways, IMCD shall have discharged its warranty obligation under Article 7 fully and shall not be obliged to pay any further compensation. Replaced products shall become the property of IMCD.
- 6.9 IMCD may at its discretion refuse the Goods for return for any reason other than the conditions contained herein. Without limiting the provisions of any other condition within these Terms and Conditions, IMCD's liability with respect to claims shall not exceed the purchase price of the Goods. IMCD may at its discretion replace the Goods which are the subject of a claim, at no extra cost to the Purchaser, and the replacement Goods shall be subject to these Terms and Conditions.

Article 7 - WARRANTY

IMCD warrants the Purchaser that the products sold to the Purchaser shall at the moment of delivery comply with the specifications as provided by IMCD to the Purchaser for such products. IMCD does not make any express or implied warranty as to the merchantability or fitness for any particular purpose of the products. This warranty shall lapse if the Purchaser fails to fulfil its obligations under the Agreement and/or these Terms and Conditions. Invoking the warranty shall not release the Purchaser from its obligations under the Agreement and/or these Terms and Conditions. Notwithstanding anything to the contrary contained in these Terms and Conditions, in case of a breach of the warranty given to the Purchaser in terms of this Article 7, the Purchaser's only remedy is a claim for specific performance by IMCD of its obligations under such warranty.

Article 8 - LIABILITY

- 8.1 IMCD shall not be liable for any damage sustained by the Purchaser, irrespective of whether this damage is the result of failure by IMCD to fulfil its obligations under the Agreement and/or these Terms and Conditions (including the warranty obligation of Article 7), or of any act and/or omission by IMCD itself and/or by others acting on IMCD's instructions, unless the Purchaser proves that the damage is the result of intentional or willful recklessness or default and/or gross negligence by IMCD and/or by others acting on IMCD's instructions.
- 8.2 Unless otherwise provided by law, neither party shall be liable to the other party for (i) indirect loss of any kind including special or consequential loss, (ii) lost revenue or profits, or (iii) loss suffered by the other party or by a third party as a result of the first party, or a person for whom it is liable under applicable law, committing a non-material breach of the Agreement.
- 8.3 IMCD shall not be liable for damage or loss, of whatever nature and in whatever form, which arises or is incurred after the products delivered by
- 8.4 IMCD have been treated and/or processed.
- 8.5 IMCD does not guarantee the completeness and accuracy of information received by IMCD from its own supplier and shall not be liable for any damage – of whatever nature and in whatever form – incurred as a result of the incompleteness or inaccuracy of this information.
- 8.6 The Purchaser shall compensate IMCD for, and indemnify it against, all third-party claims arising out of the Purchaser's breach or failure to observe any of its obligations pursuant to the Agreement and/or these Terms and Conditions, for whatever reason, in connection with compensation for any damage, costs, interest and/or losses which arise in connection with the products delivered by IMCD to the Purchaser, unless and insofar as the Purchaser demonstrates that the claim falls exclusively within IMCD's area of responsibility.
- 8.7 The provisions of this Article shall also apply in favour of all legal or natural persons used by IMCD to perform its obligations under the Agreement.

Article 9 – BUSINESS ETHICS AND COMPLIANCE WITH LAWS

- 9.1 Purchaser shall, in purchasing products or services, act in the best interests of IMCD and shall not, without the prior written consent of IMCD, participate in any business activity which may create a conflict of interest between the Purchaser and IMCD.
- 9.2 Purchaser acknowledges it has accessed and read the [ESG Standards for IMCD Business Partners](#) ("ESG Standards") and agrees to implement the requirements set forth therein throughout its organisation. The purchase of services or products from IMCD pursuant to this Agreement will take place in compliance with the ESG Standards. The Purchaser will inform IMCD immediately if it becomes aware of anything that may indicate a violation or any suspicion of a violation of the ESG Standards.
- 9.3 Without prejudice to the foregoing in this Article, the Purchaser shall comply with all applicable laws including but not limited to laws and conventions relating to (a) competition law, (b) anti-bribery, and anti-corruption, including, without limitation, the *United States Foreign Corrupt Practices Act* and the *United Kingdom Bribery Act*.
- 9.4 Furthermore, the Purchaser shall comply with all national and international laws and regulations relating to export control, trade, economic and financial sanctions, embargoes, and customs regulations including, without limitation, (i) those laws and regulations related to trade, economic, and financial sanctions and embargoes implemented by the United States of America ("US"), the United Kingdom ("UK"), the European Union ("EU"), and any other applicable laws and regulations and will include the following countries: Iran, Syria, North Korea, Belarus, Russia and non-government controlled areas of Ukraine, (ii) those laws and regulations restricting the sale, supply, transfer or export, or re-export of products to restricted or denied customers, end-users and other third parties, and (iii) those laws and regulations restricting the import, export, re-export, transfer, brokering and transit of dual-use and other controlled items (the "Trade Control Regulations"). The Purchaser shall not directly or indirectly utilise, sell, ship, export, reexport, supply or otherwise transfer, the products purchased from IMCD to or through any country, entity or individual, or for any use as prohibited under Trade Control Regulations. Without limiting the generality of the foregoing, the Purchaser shall not sell or use the products purchased from IMCD, in their entirety or in part, in connection with: (i) any nuclear activity, (ii) the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles and/or other systems capable of delivering such weapons; (iii) the development, production, handling, operation, maintenance or storage of cluster munitions or anti-personnel mines, and / or (iv) human rights violations.
- 9.5 The Purchaser shall procure that any third parties to whom the products from IMCD shall 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.
- 9.6 The Purchaser agrees to indemnify and hold harmless IMCD, 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 Purchaser's failure to adhere to the provisions of this Article.

Article 10 – COMPLIANCE WITH LAWS

- 10.1 The Purchaser shall comply with all applicable laws including but not limited to laws and conventions relation to (i) competition law, (ii) anti-bribery, and anti-corruption, and (iii) laws relating to export control and custom 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 regiment for the control of exports, transfer, brokering and transit of dual-use items. The Purchaser shall not directly or indirectly utilize, sell, ship or otherwise transfer the Goods purchased from IMCD to or through any country, entity or individual as prohibited under national and international regulations.
- 10.2 Without prejudice to the other provisions in this Article, the Purchaser shall comply with all applicable laws and regulations in performing its obligations under these Terms and Conditions in a manner consistent with the Purchaser's Code of Conduct. The Purchaser confirmed to have read and agrees to the IMCD Code of Conduct which is available at the following website: <https://www.imcdgroup.com/investors/corporate-governance/code-of-conduct>.
- 10.3 The Purchaser shall procure that any third parties to whom the Goods from IMCD will be supplied, whether in original form or as immediate or end product, are under the same obligations as set out in this Article, such that third parties down the supply chain, as far as the end-user, are under the same strict compliance.
- 10.4 The Purchaser agrees to indemnify and hold harmless IMCD, its officers, employees, agents and representatives, from and against all damage, losses, liabilities, penalties, costs and expenses, including reasonable legal fees, as a result of any claim, suit, action, proceeding, demand, judgment or settlement arising out of the Purchaser's failure to adhere to the provisions of this Article.

Article 11 – ANTI-SLAVERY

- 11.1 IMCD is committed to ensuring that there is no modern slavery in its supply chain, or part of its business. IMCD has a zero-tolerance approach to modern slavery and is committed to acting ethically and with integrity in all IMCD's business dealings and relationships.
- 11.2 IMCD expects the same high standards from all of its contractors, buyers and other business partners.
- 11.3 IMCD will:
- Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, conventions, and codes from time to time in force, including but not limited to the *Modern Slavery Act 2018* (Cth).
 - Implement and enforce effective systems and controls to ensure modern slavery is not taking place anywhere in its own business, its supply chain or its Purchaser's supply chain.
- 11.4 Any breach of this Article will result in the Purchaser's account with IMCD being terminated immediately without notice to the Purchaser.

Article 12 – HEALTH AND SAFETY

It is the Purchaser'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 Purchaser on potential hazards relation to the Goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. It is also the Purchaser's responsibility to provide safe facilities for the reception of the Goods into storage.

Article 13 - FORCE MAJEURE (NON-ATTRIBUTABLE NON-PERFORMANCE)

- 13.1 In the event that, due to force majeure, IMCD is prevented from performing the Agreement, or performance becomes more costly, IMCD shall have the right to suspend the Agreement in full or in part for the duration of the force majeure situation, or to terminate the Agreement in full or in part, without judicial intervention and without IMCD being obliged to pay any compensation.
- 13.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, that permanently or temporarily prevents the performance by IMCD of the Agreement. Such circumstances shall in any case be understood to include, without limitation, inability to pay for whatever reason, strikes, excessive staff sickness, interruptions in production, transport problems, fire and other business disruptions, import, export and transportation bans, late, defective or no delivery by IMCD's suppliers, and other events beyond the control of IMCD, such as flood, storm, natural and/or nuclear disasters, pandemic, epidemic, war and/or threat of war, but also changes in legislation and/or government measures. In addition, IMCD may always rely upon force majeure in the case of unsuitability of products and/or persons used by IMCD to perform the Agreement.
- 13.3 If IMCD suspends performance of the Agreement in accordance with the provisions of this Article, the Purchaser shall, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 2.5 of these Terms and Conditions up to the new delivery date.

Article 14 - PAYMENT

- 14.1 Unless agreed otherwise in writing, payment must be made within thirty (30) days after month end (EOM), without any discount and/or setoff, in the currency specified on the invoice.
- 14.2 If payment in full is not made within the period stated, the Purchaser shall be in default by operation of law and shall be liable to pay thirteen percent (13%) annual interest or the statutory interest rate, whichever is the higher.
- 14.3 The Purchaser shall fully pay to IMCD its actual judicial and extrajudicial costs, including legal fees, incurred as a result of the Purchaser's failure to fulfil its obligations under the Agreement in full and/or on time, whereby in any event the Purchaser is obliged for any such failure to pay to IMCD at least extrajudicial costs amounting to fifteen percent (15%) of the outstanding amount (which the Purchaser agrees is a fair and reasonable pre-estimation).
- 14.4 Without prejudice to the provisions of Article 6.3 and Article 6.4, complaints about invoicing or disputed amounts may only be made within the payment term. Complaints shall be submitted in writing. The submission of complaints shall not suspend the Purchaser's payment obligation in respect of any undisputed amounts.
- 14.5 Payments shall be deducted firstly from judicial costs, extrajudicial collection costs and interest payable, and then from the outstanding principal sums, starting with the oldest outstanding principal sums, regardless of any instructions to the contrary from the Purchaser.
- 14.6 The Purchaser shall be unable to offset any debt to IMCD against any claim of the Purchaser against IMCD.
- 14.7 The Purchaser shall pay all reasonable expenses to IMCD 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.
- 14.8 All monies owing and outstanding to IMCD on any account whatsoever by the Buyer shall become immediately due and payable at the option of IMCD if any of the following events occur:
- The Purchaser becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration. The Purchaser makes a scheme or compromise with its creditors;
 - The Purchaser 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 Purchaser;

- c) The Purchaser or a related company of the Purchaser (within the meaning of the *Corporations Act* (Cth) 2001 or any Guarantor of the Buyer defaults or breaches any condition or understanding under these Terms and Conditions or any other contract or agreement between IMCD and the Purchaser or IMCD and the related company.

Article 15 - SUSPENSION AND TERMINATION

- 15.1 Without prejudice to the provisions of Article 13, and without prejudice to the right to claim compensation, either party may suspend the fulfilment of its obligations under the Agreement either wholly or in part or terminate the Agreement either wholly or in part, without need for a court order, by means of a written notification, without any obligation to pay compensation, in the event that (there is a reasonable expectation that):
- (a) the other party materially fails to fulfil one of its obligations under the Agreement (in the Purchaser's case this includes its obligation to pay on time and in full);
 - (b) an attachment is made against the other party;
 - (c) the other party is granted a moratorium;
 - (d) a petition is filed for the other party's bankruptcy, or the other party is declared bankrupt;
 - (e) the other party makes a payment arrangement with one or more of its creditors;
 - (f) the other party, if a natural person, dies, is placed under guardianship or, in the context of a legal person, is put into administration; or
 - (g) the other party's business is sold or dissolved.
- If, in accordance with Article 15.1, IMCD suspends performance of the Agreement, the Purchaser shall, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 2.5 of these Terms and Conditions up to the new delivery date.
- 15.2 If, in accordance with Article 15.1, IMCD terminates the Agreement in whole or in part, IMCD may claim back, as its property, any products delivered but not yet paid for in full, offset against any sums already paid, without prejudice to its right to compensation.
- 15.3 If one of the situations described in Article 15.1 arises, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.
- 15.4 Save for the aforementioned events in Article 15.1, the Purchaser may not suspend compliance with its obligations under or in connection with the Agreement or these Terms and Conditions on whatever grounds.

Article 16 - RESERVATION OF TITLE

- 16.1 The products which IMCD supplies to the Purchaser shall remain the property of IMCD until the Purchaser has paid all amounts, including interest and costs, it owes to IMCD under or in connection with the Agreement. Before payment has been made in full, the Purchaser shall not have the right to fully or partially pledge the products to third parties. Purchaser shall further not have the right to transfer ownership of the products, other than in accordance with its normal activities or the normal use of the products.
- 16.2 The Purchaser shall keep the products delivered subject to a reservation of title with due care and as the recognisable property of IMCD and shall insure these products against damage and theft.
- 16.3 If one of the situations described in Article 15.1 arises, IMCD shall have the right to take back itself, or have someone else take back, the products which are its property, at the Purchaser's expense, from the place where they are located. The Purchaser shall cooperate fully and hereby authorises IMCD irrevocably, if that situation arises, to enter, or have someone enter, the premises in use by or for the Purchaser.
- 16.4 The Purchaser shall not be permitted to rely upon a right of retention with regard to the costs incurred in connection with the safekeeping pursuant to Article 16.3, or to offset those costs against its performance.
- 16.5 If the Purchaser forms a new product from, or partly from, the products delivered to it by IMCD, IMCD shall have co-ownership title and rights on the new product in proportion of the value of the products processed or mixed in relation to the new product. Furthermore, the Purchaser shall keep (part of) the product for IMCD, and IMCD shall always remain the owner equal to its share of co-ownership until all the obligations referred to Article 16.1 have been fulfilled.

Article 17 PROPERTY SECURITIES ACT 2009 (PPSA)

- 17.1 The Purchaser acknowledges it will grant IMCD a security interest (preferably, a Purchase Money Security Interest) in all present and after acquired products supplied by IMCD and their proceeds to secure all moneys owing to IMCD now and in the future in respect of the supply of the products.
- 17.2 The Purchaser undertakes to provide any information that IMCD may reasonably require to enable IMCD to perfect and maintain the perfection of IMCD's security interest (including by registration of a financing statement).
- 17.3 The Purchaser undertakes to immediately notify IMCD in writing of any changes in the Purchaser name and/or any other change in the Purchaser details (including, but not limited to, changes in the Purchaser's address, contact number, trading name or business practice). The Purchaser will not have the right to transfer any products provided by IMCD to any potential purchaser or purchaser of the Purchaser's business, unless the products are first paid for in full to IMCD.
- 17.4 In placing an order with Purchaser expressly represents that the Purchaser:
- a) Is solvent; and
 - b) Has not committed an act of bankruptcy; and
 - c) Knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Customer's assets.
- 17.5 In this Article the terms defined in the PPSA have the same meaning in this Article (unless otherwise defined in this Article).
- 17.6 The Purchaser agrees that these Terms and Conditions continue a security agreement for the purposes of the PPSA.
- 17.7 The title or property in any Goods delivered by IMCD to the Purchaser shall pass to the Purchaser only upon payment in full by the Purchaser to IMCD in relation to all Goods that have been delivered to the Purchaser pursuant to these Terms and Conditions as well as any other sums of money that may be due and payable pursuant to these Terms and Conditions. IMCD holds a Security Interest in all goods supplied to the Purchaser for payment of those moneys.
- 17.8 Until all moneys due to IMCD are paid by the Purchaser, the Purchaser agrees to act as a fiduciary of IMCD and that the Purchaser will:
- a) Not sell, charge or part with possession of the Goods, otherwise than for their full values in the ordinary course of business;
 - b) Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are IMCD's property.
 - c) Store the Goods in such manner that they are clearly identifiable as IMCD's property and must keep separate records of the Goods; and
 - d) Hold the proceeds of the resale of the Goods in trust for IMCD, in a separate and identifiable manner;
- 17.9 At IMCD's request, the Purchaser will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that IMCD may require from time to time to give effect to these Terms and Conditions, including without limitation doing all such things as IMCD may require to ensure that the Security Interest created under these Terms and Conditions constitutes a perfected

- Security Interest over the Goods. This includes, but is not limited to, providing any information IMCD requests to complete a financing statement or a financing change statement for the PPSR.
- 17.10 The Purchaser waives any right to receive a verification statement under the PPSA.
- 17.11 The Purchaser undertakes to immediately notify IMCD in writing of any changes in the Purchaser's name and/or any other change in the Purchaser's details (including, but not limited to, changes in the Purchaser's address, facsimile number, trading name or business practice). The Purchaser will not have the right to transfer any Goods provided by IMCD to any potential purchaser or purchaser of the Purchaser's business, unless the Goods are first paid for in full to IMCD.
- 17.12 Nothing in sections 130(1)(a), 143(1) and 143(2) of the PPSA shall apply to these Terms and Conditions. The Purchaser's rights as a debtor in sections 92, 95, 97, 132 and 134(2) of the PPSA shall not apply to these Terms and Conditions.
- 17.13 The Purchaser's right to sell Goods will terminate forthwith on written notice of such termination being delivered by IMCD to the Purchaser's place of business.
- 17.14 The Purchaser's right to possession of the Goods shall cease if:
- The Purchaser commits an available act of bankruptcy; or
 - The Purchaser does anything or fails to do anything in circumstances where such act or omission operates to entitle a receiver or liquidator to take possession of any assets, or which would entitle any person to apply to the Court to liquidate the Purchaser; or
 - The Purchaser is overdue in making payment of any sum due to IMCD and IMCD makes demand. Demand may be made upon the Purchaser or any employee or authorised agent of the Purchaser by IMCD or any employee or authorised agent of IMCD either in writing at any time prior to repossession or verbally or in writing at the time of repossession; or
 - Notice is given terminating the Purchaser's right to sell goods; or
 - This agreement is terminated.
- 17.15 For the purpose of recovery of the Goods, IMCD may by IMCD's employee(s) or agent(s) enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same. This permission is irrevocable and the Purchaser agrees that the employees, servants or agents of IMCD so entering are not trespassing. The Purchaser irrevocably agrees the Purchaser will not seek to invoke the provisions of any Acts to warn such persons to leave the Purchaser's premises, nor will the Purchaser procure any other person to take such action.
- 17.16 Any Goods held by the Purchaser which meet the description of Goods on an invoice in respect of which either payment has not been made in full or in respect of which title to Goods has not transferred from IMCD hereunder shall, in the absence of separate storage of Goods in terms of Article 9(e)(iii) herein and in the absence of evidence to the contrary, be deemed to be Goods to which IMCD has retained title so that IMCD shall be entitled to exercise any of IMCD's remedies hereunder against such Goods.
- 17.17 If the Purchaser has not received the proceeds of sale of the Goods subject to this Article then the Purchaser will within seven (7) days of being called upon so to do by IMCD assign to IMCD all rights which the Purchaser may have against the person or persons to whom the Purchaser has supplied any Goods.
- 17.18 Following repossession of the Goods IMCD shall sell the goods in whatever manner IMCD deems appropriate whether wholesale or retail and shall credit the account of the Purchaser with the net proceeds of sale. The net proceeds of sale shall be the actual price received for the goods less all costs of sale including if incurred, rental of premises, staff wages, transport costs, advertising costs and all out of pocket expenses. IMCD shall be obliged to list all Goods repossessed but shall not be obliged to record or account for the sale of Goods on an item-by-item basis. Proceeds of sale may be accounted for globally.
- 17.19 The debt owing by the Purchaser to IMCD at the date of repossession of Goods shall, as between the parties, be deemed to include any payment previously received by IMCD which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors – irrespective of whether such a claim shall have been made at that date.
- 17.20 The Purchaser will pay all costs, expenses and other charges incurred, expended or payable by IMCD in relation to the filing of a financing statement or financing change statement in connection with these Terms and Conditions.
- 17.21 The Purchaser agrees that in the event of external administration of the Purchaser, the Purchaser will disclose the quantity/volume of IMCD'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. Any risk in the Goods will pass at the time of delivery and the Purchaser must insure the Goods.

Article 18 - INTELLECTUAL PROPERTY

- 18.1 The Agreement and these Terms and Conditions do not entail any grant, transfer or licensing of any Intellectual Property Rights to the Purchaser.
- 18.2 The Purchaser warrants to IMCD at all times and indemnifies IMCD in this respect that the use by IMCD of data, specifications or material provided by the Purchaser does not breach any statutory regulation or infringe third-party rights.

Article 19 – LICENCES AND CONSENTS

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

Article 20 - CONFIDENTIALITY

If IMCD discloses or grants to the Purchaser access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Purchaser shall treat this information as strictly confidential and shall not, directly or indirectly, make use of any such information or disclose such information to any third party at any time, without IMCD's prior written consent. In the event that Purchaser and IMCD have entered into a separate confidentiality agreement, the terms and conditions of such agreement shall take precedence over the terms of this Article.

Article 21 PRIVACY POLICY

IMCD complies with the *Privacy Act* 1988 (Cth) as amended and is bound by the National Privacy Principles dealing with the collection, use and storage of personal information about individuals.

Article 22 - USE OF INFORMATION

The Purchaser agrees that IMCD may obtain information about the Purchaser from the Purchaser or any other person (including other members of IMCD and any credit or debt collection agencies) in the course of IMCD's business, including credit assessment, debt collecting and direct marketing activities, and the Purchaser consents to any person providing IMCD with such information.

The Purchaser agrees that IMCD may use any information it has about the Purchaser relating to the Purchaser's credit worthiness and, subject to any confidentiality agreement between the Purchaser and IMCD, give that information to any other person, including any credit or debt collection agency and other members of IMCD, for credit assessment and debt collection purposes. The Purchaser agrees that any other information collected by IMCD about the Purchaser is accessed or collected for the use of any member of IMCD in the course of its business, including direct marketing activities.

The Purchaser must notify IMCD of any change in circumstances that may affect the accuracy of the information provided by the Purchaser to IMCD.

Notwithstanding anything else contained in these terms, where the Purchaser is a natural person, the Purchaser specifically agrees for the purposes of privacy legislation including the *Privacy Act 1988* (Cth) as amended to IMCD:

- a) being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under this agreement; and
- b) disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her credit worthiness, credit history or credit capacity; and
- c) IMCD advises the Purchaser, and the Purchaser acknowledges that IMCD may disclose the information it acquires about the Purchaser to a credit reporting agency. The Purchaser may gain access to the information obtained by IMCD under this Article.
- d) If the Purchaser or any other person fails to provide to IMCD any or all of the information requested by IMCD, IMCD may determine not to provide credit to the Purchaser or not to contract with the Purchaser.

Article 23 - INVALIDITY AND CONVERSION

If any provision in the Agreement or these Terms and Conditions is held to be or becomes illegal, invalid, not binding or unenforceable (in each case either in its entirety or in part) under any law of any jurisdiction:

- 23.1 that provision shall to the extent of its illegality, invalidity, lack of binding effect or unenforceability be deemed not to form part of the Agreement but the legality, validity, binding effect and enforceability of the remainder of the Agreement or these Terms and Conditions shall not be affected; and
- 23.2 a provision shall apply between IMCD and the Purchaser which is legal, valid, binding and enforceable which is as similar as possible in terms of contents and purpose.

Article 24 - NOTICE

24.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party:

- a) personally or sent by commercial courier, at its principal place of business with a copy to its registered office (if a company) or (in any other case) the address set out in the Agreement or otherwise provided by a party; or
- b) sent by fax or email to the other party's main fax number or email address, respectively.

24.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or email, on the next Business Day after transmission.

Article 25 - ASSIGNMENT

25.1 IMCD may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement or these Terms and Conditions and may subcontract or delegate in any manner any or all of its obligations under the Agreement or these Terms and Conditions to any third party.

25.2 The Purchaser shall not, without the prior written consent of IMCD, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement or these Terms & Conditions.

Article 26 - NO PARTNERSHIP OR THIRD PARTY RIGHTS

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way. A person who is not a party to the Agreement shall not have any rights under or in connection with it.

Article 27 - WAIVER AND CUMULATIVE REMEDIES:

A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and to not exclude rights provided by law.

Article 28 - AUTHORITY

Purchaser represents and warrants to IMCD that its signatory to the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, the Purchaser enforceable against the Purchaser in accordance with its terms. Specifically, the Purchaser represents and warrants that the signatory to the Agreement has authority to bind the Purchaser to an arbitration agreement for purposes of Article 29.

Article 29 - APPLICABLE LAW AND DISPUTE RESOLUTION

The laws of the State of Victoria, Australia shall apply exclusively to all Agreements and to these Terms and Conditions, and to any non-contractual obligation arising out of or in connection with the Agreement or these Terms and Conditions. Applicability of the United Nations Convention on Contracts for the International Sale of Products (CISG) is explicitly ruled out. All disputes arising in connection with the Agreement or these Terms and Conditions, including disputes concerning the existence and validity thereof, shall, be submitted to settle in arbitration in accordance with the rules of the ICC. In that connection, the following applies:

- a) The seat and place of arbitration shall be Melbourne, Victoria, Australia.
- b) The arbitral tribunal shall be composed of one arbitrator, unless otherwise agreed by the Parties in writing
- c) The tribunal shall decide in accordance with the rules of law.
- d) Any arbitration award or decision shall be final and binding on the Parties.
- e) No arbitral award, or any part thereof, shall be published in any form.

IMCD may also bring any dispute as described in this Article 23 before the competent Victorian court.

Article 30 – COMPETITION AND CONSUMER ACT 2010 (“CCA”)

- 30.1 Where these Terms and Conditions would otherwise be subject to the CCA, you agree that you are acquiring the products for business purposes and that the CCA does not apply to the supply of the products to you.
- 30.2 If you are a consumer as defined in Section 4B of the CCA and you have not contracted out of the CCA under Article 27.1 above, nothing in these Terms and Conditions will limit any rights you may have under the CCA.

Article 31 – MISCELLANEOUS

- 31.1 The headings of these Terms and Conditions are provided for convenience only and shall have no effect on the interpretation thereof.
- 31.2 If at any time IMCD does not enforce any of these Terms and Conditions or grants the Purchaser time or other indulgence, the Purchaser shall not be construed as having waived that term or condition, or any of its rights to later enforce that or any other terms and condition.
- 31.3 If a provision or part of a provision is illegal, void, or unenforceable, the remainder of the provision and all other provisions shall continue in force and effect.