

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 New Zealand 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 the Goods and Services Tax Act 1985 (NZ) ("the GST Act") as amended from time to time.
IMCD:	means IMCD New Zealand Ltd being the supplier of Goods delivered or services provided or, such other company being a related company as defined in the Corporations Act 1993 (NZ), or any other body or legal entity under the control 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 amended or 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 purpose 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. 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 be passed 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:
- store the products until actual delivery/collection and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; and/or
 - sell the products at the best price readily obtainable and (after de-ducting 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.
- 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.
- 4.3 If and to the extent, any supply of Goods is a taxable supply within the meaning of the GST Act, the price of the Goods will be increased to include GST Payable by the Purchaser in respect of the supply. All rebates, discounts or reductions in price will be calculated on the GST exclusive price.
- 4.4 The parties agree that:
- The parties must be registered persons within the meaning of the GST Act;
 - The Purchaser must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Act; and
 - Costs required to be reimbursed or indemnified exclude any amount that represents GST for which an input tax credit within the meaning of the GST Act can be claimed.

Article 5 – PPS LAW

- 5.1 The Purchaser agrees that nothing in Sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Properties Securities Act 1999 (NZ) ("the PPSA") will apply to these Terms and Conditions of Sale or any other agreements arising between the Purchaser and Purchaser, or the security under this agreement.
- 5.2 The Purchaser agrees to waive its right to do any of the following:
- Receive a statement of account of the proceeds of sale of collateral under Section 116 of the PPSA;
 - Recover any of the surplus proceeds of sale of collateral under Section 119 of the PPSA;
 - Object to the Purchaser's proposal to remain any personal property under Section 121 of the PPSA;
 - Not have Goods damaged when the Purchaser removes an accession under Section 125 of the PPSA;
 - Receive notice of the removal of an accession under Section 129 of the PPSA;
 - Apply to the Court for an order concerning the removal of an accession under Section 131 of the PPSA; or
 - To receive a copy of the verification statement confirming registration of a financial statement or a financing change statement relating to any security interest that may be created by this agreement.
- 5.3 For the avoidance of any doubt, it is hereby agreed that the Purchaser shall take a security interest in all Goods supplied by it to the Purchaser, and that security interest shall remain under payment is made for all Goods supplied by the Purchaser.

Article 6 - TRANSPORT EQUIPMENT AND PACKAGING

- 6.1 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.
- 6.2 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.
- 6.3 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 7 - RETURNS, COMPLAINTS AND REMEDIES

- 7.1 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.
- 7.2 The Purchaser 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 Terms and Conditions, the Purchaser's liability with respect to claims shall not exceed the Purchase Price of the Goods. The Purchaser may at its discretion replace 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.
- 7.3 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.
- 7.4 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. Lacking 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.
- 7.5 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.
- 7.6 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.
- 7.7 Submitting complaints shall not release the Purchaser from its payment obligations.
- 7.8 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.

Article 8 - WARRANTY

IMCD warrants to 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 8, the Purchaser's only remedy is a claim for specific performance by IMCD of its obligations under such warranty.

Article 9 - LIABILITY

- 9.1 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 8), 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 by IMCD and/or by others acting on IMCD's instructions.
- 9.2 Unless otherwise provided by law, IMCD shall not be liable for (i) indirect loss of any kind including special or consequential loss, (ii) lost revenue or profits, or (iii) loss suffered by the Purchaser or by a third party as a result of IMCD, or a person for whom it is liable under applicable law, committing a non-material breach of the Agreement.
- 9.3 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 IMCD have been treated and/or processed.
- 9.4 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.
- 9.5 The Purchaser shall compensate IMCD for, and indemnify it against, all third-party claims, 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.
- 9.6 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 10 – BUSINESS ETHICS AND COMPLIANCE WITH LAWS

- 10.1 Purchaser shall, in purchasing goods 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.
- 10.2 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 goods from IMCD pursuant to this Agreement will take place in compliance with the ESG Standards. 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.
- 10.3 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*.
- 10.4 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, the United Kingdom, the European Union, 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, re-export, 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.

- 10.5 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.
- 10.6 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 11 – COMPLIANCE WITH LAWS

- 11.1 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.
- 11.2 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>.
- 11.3 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.
- 11.4 The Purchaser agrees to indemnify and hold harmless IMCD, is 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 12 - ANTI-SLAVERY

- 12.1 The Purchaser is committed to ensuring that there is no modern slavery in its supply chain, or part of its business. The Purchaser has a zero-tolerance approach to modern slavery and are committed to acting ethically and with integrity in all the Purchaser's business dealings and relationships.
- 12.2 The Purchaser expects the same high standards from all of its contractor, Purchasers, and other business partners.
- 12.3 The Purchaser will:
- (a) Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, international law and conventions, and codes from time to time in force.
 - (b) 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 business.
- 12.4 Any breach of this Clause 17 will result in the Purchaser's account with the Purchaser being terminated immediately without notice to the Purchaser.

Article 13 - HEALTH AND SAFETY

- 13.1 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 relating to the Goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. Without prejudice to the foregoing, it is also the Purchaser's responsibility to provide safe facilities for the reception of the Goods into storage.

Article 14 - FORCE MAJEURE (NON-ATTRIBUTABLE NON-PERFORMANCE)

- 14.1 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.
- 14.2 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.
- 14.3 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 15 - PAYMENT

- 15.1 Unless agreed otherwise in writing, payment must be made within twenty (20) days after month end (EOM), without any discount and/or setoff, in the currency specified on the invoice.
- 15.2 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 ten percent (10%) annual interest or the statutory interest rate, whichever is the higher.
- 15.3 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).
- 15.4 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.
- 15.5 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.
- 15.6 The Purchaser shall be unable to offset any debt to IMCD against any claim of the Purchaser against IMCD.

- 15.7 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.
- 15.8 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;
 - The Purchaser or a related company of the Purchaser (within the meaning of the Corporations Act 1993 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 16 - SUSPENSION AND TERMINATION

- 16.1 Without prejudice to the provisions of Article 10, and without prejudice to the right to claim compensation, IMCD 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):
- the Purchaser materially fails to fulfil one of its obligations under the Agreement, such as its obligation to pay on time and in full;
 - an attachment is made against the Purchaser;
 - the Purchaser is granted a moratorium;
 - a petition is filed for the Purchaser's bankruptcy, or the Purchaser is declared bankrupt;
 - the Purchaser makes a payment arrangement with one or more of its creditors;
 - the Purchaser, if a natural person, dies, is placed under guardianship or, in the context of a legal person, is put into administration; or
 - the Purchaser'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.
- 16.2 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.
- 16.3 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.
- 16.4 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 17 - RESERVATION OF TITLE

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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 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 - 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 Article 18 herein.

Article 20 - 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:

- 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
- 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 21 - NOTICE

- 21.1 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.
- 21.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor 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 22 - ASSIGNMENT

- 22.1 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.
- 22.2 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 23 - 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 24 - 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 25 - 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 24.

Article 26 - APPLICABLE LAW AND DISPUTE RESOLUTION

The laws of New Zealand 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. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (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 Auckland, New Zealand.
- (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 24 before the competent court in Auckland, New Zealand.

Article 27 - MISCELLANEOUS

- 27.1 The headings of these Terms and Conditions are provided for convenience only and shall have no effect on the interpretation thereof.
- 27.2 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.
- 27.3 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.