

TERMS AND CONDITIONS OF SUPPLY BY CUSTOM CHEMICALS INTERNATIONAL

DEFINITIONS

1. In these Terms and Conditions, unless the context or subject matter otherwise require:

Contract Goods means any goods ordered by you from CCI at any time;

Credit Account means a credit system maintained in any form that CCI desires from time to time to record and allow you to receive Contract Goods and or QoM Services before full payment is made;

Delivery means delivery to the location/s agreed between CCI and includes such other place or date (as the case may be) as the parties may agree or as CCI may at its sole discretion consider reasonable in the circumstances;

Deposit means the amount required to be paid upon making an order for Contract Goods (if any);

Descriptive Matter includes without limitation, formulations, specifications, drawings, diagrams, particulars of weights/dimensions or any other form of measurement submitted with, after or prior to any Purchase Order with CCI that details the desired Contract Goods;

CCI (we/us/our) means Custom Chemicals International Pty Ltd ACN 050 573 674;

Intellectual Property means and includes all copyright and related Rights, all Rights in relation to inventions (including patents and patent Rights), all registered and unregistered trademarks Rights, all Rights relating to registered designs, formulations, , and all other Rights resulting from intellectual activity in the artistic, literary or scientific fields excluding any moral attribution Rights;

Manufacturer means the maker or makers of Contract Goods in circumstances when that is not CCI;

Money Owing means any and all moneys owing to CCI from you at any time whether in relation to one or more transactions, including without limitation any Overdue Amounts;

Obligation means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Originating Location means the location of the relevant Contract Goods at the time the CCI parts with possession to the party tasked with delivering the Contract Goods to you;

Overdue Amount means any amount of money that remains unpaid thirty days after the end of the calendar month of the date of the invoice for that amount or for a sum including that amount;

Personal Information has the definition attributed to it under the *Privacy Act 1988* (Cth);

Purchase Order means CCI's standard purchase order form or any other form or method of communication in which a purchase order is made for Contract Goods;

QoM Services means any labour, time, expenses, outlays or other consideration CCI may provide from time to time pursuant to clause 27;

Right means any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

Terms and Conditions means the terms and conditions set out in this document; and

You/your means the person or entity who has requested the Contract Goods and/or the person or entity on behalf of whom the request for Contract Goods is made and/or the person listed as the Customer in the Purchase Order;

GENERAL

2. When you enter into any transaction with CCI, whether conditional or unconditional, you acknowledge that:
- (a) you have read and agree to be bound by these Terms and Conditions; and
 - (b) CCI is dealing with you on the express basis that these Terms and Conditions will apply in full to the transaction.

ORDERING GOODS OR SERVICES

3. Your submission of a Purchase Order constitutes an offer from you to CCI and must be issued via email unless CCI

expressly consent to another method being used.

agents, employees or any other entity purporting to be acting on behalf of CCI in purchasing Contract Goods.

4. An offer made by you must conform to any current price list issued by CCI. If a specific item under a Purchase Order does not exist within a price list, CCI will notify you of the cost of the Contract Goods contained in your Purchase Order. CCI may amend price lists upon notice, but not more often than twice per year without limiting adjustments entitled to be made under clause 14.

5. CCI may accept an offer from you by any of the following means of communication:

- (a) written acceptance; or
- (b) verbal acceptance; or
- (c) email acceptance; or
- (d) by conduct, in commencing activities in connection with an offer or Purchaser Order made by you.

6. Once CCI has performed an act of acceptance under clause 5 of these Terms and Conditions, CCI is entitled to:

- (a) rely on this acceptance as forming a contract (the **Contract**) to provide Contract Goods on the basis set out in these Terms and Conditions; and
- (b) receive from you full payment for the Contract Goods regardless of whether or not you wish to complete the transaction at a later time.

7. All Descriptive Matter provided by you must be accurate, safe and not be in breach of another party's Intellectual Property Rights. You acknowledge that:

- (a) Descriptive Matter is not necessarily checked for suitability or accuracy by CCI;
- (b) you have not relied CCI analysing or vetting the Descriptive Matter as part of the manufacturing process and provision of Contract Goods; and
- (c) you have not relied upon any inducement, representation or statement made by CCI or its

8. You may provide specifications to CCI within the Descriptive Matter in connection with your Purchase Order, however if before the manufacture of the Contract Goods the Manufacturer modifies the specification to comply with any law, safety requirements or availability of raw materials:

- (a) the modified specification should be substituted for any specification in the request or offer;
- (b) you will accept the Contract Goods as manufactured in accordance with the modified specification in satisfaction of CCI's Obligations under the Contract; and
- (c) upon request by CCI, you will be liable to pay the amount of any increase in the Manufacturer's prices resulting from such modifications.

PAYMENT / NON-PAYMENT

9. CCI reserves the right to request payment of an upfront cash deposit before providing Contract Goods, CCI will notify you if this is required.

10. A failure by you to make payment in accordance with clause 9 does not:

- (a) prevent us from accepting the offer in any manner provided for in clause 5; or
- (b) limit or derogate from any of your Obligations under these Terms and Conditions.

11. If demanded, payment of an invoice issued by us must be made prior to dispatch of Contract Goods to you.

12. If no demand pursuant to clause 11 is made, then if payment in full is not received within thirty days of the end of the calendar month of the date of the invoice, this constitutes an event of default and the

invoiced amount or any unpaid portion of it becomes an Overdue Amount.

13. Upon an event of default, CCI may:
- (a) charge interest at the rate of 2% per month on any Overdue Amount from the date upon which it became due until the date of its eventual payment; and/or
 - (b) demand the return of the Contract Goods and repossess the Contract Goods if demand is not met within two days after the date of the demand; and/or
 - (c) institute legal proceedings to recover the Overdue Amount and all legal costs (on a solicitor and own client basis) incurred by CCI in the course of those proceedings will be a liquidated damage due and payable under these Terms and Conditions; and/or
 - (d) seek indemnity for:
 - (i) any and all costs incurred by CCI in taking any action under this clause; and
 - (ii) any claims against CCI arising out of CCI taking any action under this clause.

14. You acknowledge that in addition to any price agreed in exchange for the Contract Goods you are also liable to pay CCI the following costs (which you consent to CCI incurring on your behalf as CCI considers necessary and which will form part of the Money Owing immediately upon being incurred by CCI):
- (a) all packaging costs;
 - (b) all taxes, duties and charges whatsoever imposed by any government or other government-related authority and payable in respect or by reason of the sale or Delivery of the Contract Goods whether or not the same were payable at the date of the order or offer;
 - (c) the amount of any increase in the costs of CCI supplying or delivering the Contract Goods or

any part thereof occurring after the date of order or offer for any reason, including without limitation, changes in the Manufacturer's prices, rates of exchange, landing charges, port dues or the cost of carriage, insurance or handling;

- (d) any excess over the amount estimated by CCI in respect of freight, insurance, port dues or handling changes at any port to which the Contract Goods are to be shipped;
- (e) any excess incurred over the amount estimated by CCI to be incurred for supplying or delivering the Contract Goods, even where such excess results from an error or omission on the part of CCI, its servants, agents or employees; and
- (f) any raw materials, unique components or packaging (**Unique Items**) that are purchased by CCI on account of Descriptive Matter or specifications provided by you and required for the manufacture of Contract Goods even when those Unique Items are bought in bulk in excess of immediate requirements in order to fulfil future orders. CCI will generally only require payment for these Unique Items where you cease using CCI to manufacture goods that utilise the Unique Items or materials have a shelf life that expires before consumption, however CCI reserves the right to demand payment for Unique Items at any time after three months of having purchase them if they consider the ongoing storage and rate of use unreasonable.

DELIVERY

15. We will make all reasonable efforts to make Delivery of the Contract Goods 21-28 days starting from the day a Purchaser Order is accepted by CCI unless otherwise advised in writing by CCI.

CCI may notify you of a specific expected delivery date but notwithstanding that, you expressly release CCI from any actions or

Obligations conducted or incurred by you in reliance on any expected Delivery date and any claim or matter in connection thereof.

16. You will accept Delivery of the Contract Goods in accordance with any Purchase Order or in any other manner determined reasonable in the circumstances by CCI.
17. If you fail to accept Delivery of the Contract Goods, then you will be liable for any costs or damages incurred by CCI on account of your failure to accept Delivery.
18. The risk and all attached liability for damage of the Contract Goods passes to you at the point of departure of the Contract Goods from the Originating Location even if CCI delivers the Contract Goods itself or CCI's premises are the intended delivery location.

CREDIT APPLICATION

19. You may apply for a Credit Account by means of a specific form, available upon request.
20. CCI has complete discretion to consider, accept or reject an application for a Credit Account and is not obliged to provide reasons for rejection of any application.
21. If you provide CCI with an application for a Credit Account, you agree that CCI may use Personal Information provided by you for the following purposes and for other purposes as may be reasonable or required by law from time to time:
- (a) to assess an application by you;
 - (b) to obtain from a credit-reporting agency a credit report containing personal credit information about you. You agree that CCI may exchange information about you with those credit providers named in a consumer credit report issued by a reporting agency;
 - (c) to notify other credit providers of a default by you;
 - (d) to exchange information with credit providers as to the status of any Credit Account, where you are in default with other credit providers; and

(e) to assess your credit worthiness.

22. You agree and acknowledge that these terms and conditions apply to each and every occasion where goods are delivered to and or accepted by you and that CCI is not required to reissue you with these terms and conditions once they have been accepted by you.
23. Any application for credit completed on behalf of a corporation, must also bind its directors personally for all Obligations contained within the form and these Terms and Conditions and execution by a director will be deemed the provision of a personal guarantee for all Obligations of you under these Terms and Conditions.
24. CCI is entitled to pursue the corporation's directors personally for any Money Owing without any requirement to pursue the corporation first.
25. You acknowledge that:
- (a) CCI has absolute discretion in deciding whether or not to grant you a Credit Account or to terminate or revoke an existing Credit Account;
 - (b) there is no appeal process upon rejection of an application for a Credit Account or termination of an existing Credit Account;
 - (c) CCI is not liable for any consequences arising from denying you a Credit Account or terminating an existing Credit Account; and
 - (d) any Credit Account can be terminated at any time upon notice from CCI to you in any form at which time all money payable under the Credit Account:
 - (i) becomes immediately payable and forms part of the Money Owing; and
 - (ii) may be treated as an Overdue Amount if not paid within seven days of termination of the Credit Account or other request for payment.

LIMITATION OF LIABILITY

26. If you have a genuine grievance with any Contract Goods provided by CCI you should notify CCI in writing within three days after Delivery of the Contract Goods. CCI will then consider the merits of your claim and at its sole discretion either:
- (a) repair or replace the Contract Goods;
 - (b) provide a partial refund of the cost of the Contract Goods. A partial refund of the cost of Contract Goods may be considered only in circumstances when the Contract Goods are returned in exactly the same condition as when they were delivered; or
 - (c) decline to provide any remedy contained in this clause.

CCI expressly disclaims, to the fullest extent permitted by law, all express, implied and statutory warranties. Where any statutory terms may not be excluded, liability in respect of them is limited to no greater than the cost of replacement of the Contract Goods subject to the statutory warranty.

QUALITY OF MAKE

27. If you have an issue with the quality of make of the Contract Goods, you should:
- (a) contact CCI and request the appropriate Customer Complaint Form (**CCF**); and
 - (b) complete the CCF fully and return it to CCI.
- 27A. Upon receipt of a completed CCF, CCI will:
- (a) conduct its standard analysis of the Contract Goods to determine whether the issues identified are a quality of make issue (eg. CCI's responsibility) or not (the **Testing**);
 - (b) notify you of the results of the Testing and either:
 - a. provide a remedy pursuant to clause 26 if CCI is determined to be at fault; or
 - b. state that CCI's conduct has been in accordance with

specifications and any further investigations will be at your expense.

- 27B. If after the Testing you wish for CCI to conduct further analysis to endeavour to determine the cause of the issues identified (the **Analysis**), you agree that:
- (a) CCI may charge its time in connection with the Analysis at \$75 plus GST per hour;
 - (b) time will be recorded in a minimum of 15 minute increments;
 - (c) CCI will be entitled to engage third party contractors to assist in the Analysis at your cost; and
 - (d) invoices will be issued from time to time pursuant to this clause and if payment in full is not received within thirty days of the end of the calendar month of the date of the invoice, this constitutes an event of default and the invoiced amount or any unpaid portion of it becomes an Overdue Amount.

27C. CCI will use its best endeavours to notify you and provide an estimated quote in the event CCI expect the Analysis will exceed 2 hours of chargeable time although this requirement will not derogate from CCI's right to charge for all time in connection with the Analysis.

27D. You may request CCI cease the Analysis at any time in writing and CCI will notify all employees or third party contractors to cease work promptly thereafter. CCI will issue a final invoice for the Analysis and you will be obliged to pay in full pursuant to clause 27B. above regardless of whether parts of the work conducted were incomplete at the time you request cessation of the Analysis.

RETENTION OF TITLE

28. Ownership of Contract Goods does not pass to you until the Money Owning has been paid in full to CCI.

29. Until full payment of the Money Owing:
- (a) you must insure the Contract Goods, store them with all proper care and to the fullest extent possible keep the Contract Goods in precisely the same condition as when they were delivered;
 - (b) CCI maintains a security interest in all of your assets as well as all Contract Goods;
 - (c) CCI is entitled in its sole discretion to take such steps as it considers necessary or required to register its security interest on the PPSA register including providing information about you as the grantor of the security interest; and;
 - (d) you grant CCI the right to lodge either (or both), a:
 - (i) general security interest over the Customer's all present and after acquired assets; and/or
 - (ii) a specific security interest over the Contract Goods.
30. If you deal with the Contract Goods in a manner inconsistent with clauses 28 to 29, CCI is entitled to claim whatever the lower is of 50% of the price of the Contract Goods or the sum of \$25,000 as liquidated damages from you, which sum is payable immediately and in addition to any Money Owing.
31. Until the Money Owing has been paid, you may only on-sell the Contract Goods with the express written consent of CCI.
32. CCI will only consider consenting to an on-sale of the Contract Goods before payment of the Money Owing if the sale is for full market value and in the ordinary course of your business. The proceeds of any sale of the Contract Goods by you in accordance with this clause must be held in a separate account on behalf of CCI.
33. Any sale of the Contract Goods by you before the Money Owing is paid is completed in your own right and not as agent for CCI and you must hold CCI harmless and fully indemnify CCI from any claims made against it by the recipient of the on-sold Contract Goods or any other party to the transaction.
34. Any Rights against the recipient of the on-sold Contract Goods arising as a consequence of the sale or on-sale of the Contract Goods will be enforceable by CCI and you will assign in writing any such Rights upon request by CCI.
35. You must:
- (a) on request, disclose to CCI all relevant information regarding the Contract Goods and any on-sale by you; and
 - (b) inform CCI immediately of any levy or execution by any party against the Contract Goods, to which ownership remains with CCI.
36. CCI has an irrevocable Right to enter and remain on any place or premises where any Contract Goods are stored or located at any time to inspect them and/or to recover or procure their possession;
37. If you incorporate or mix the Contract Goods with any other items to create new products (the **Products**) such that the Contract Goods are not a readily identifiable and removable part of the Products, then until the Money Owing has been paid:
- (a) you will store the Products separately so as to be readily identifiable;
 - (b) CCI is vested with ownership of the Products; and
 - (c) clauses 28 to 37 will apply as if references to Contract Goods were references to Products.
- ## LICENCES
38. If it is necessary for the lawful fulfilment of any transaction under these Terms and Conditions:
- (a) for you to hold or obtain any license, consent or authority (**Licence**), you will fully indemnify CCI from any claims or losses

arising out of your failure to hold or obtain any Licence;

- (b) for CCI to hold or obtain any Licence, CCI may take any reasonable steps to comply with its legal requirements in this regard. However, you acknowledge that we have made no representation that we hold any relevant Licence and you fully indemnify us for any claim or loss arising out of your reliance on any presumption that we do hold any relevant Licence.

TERMINATION

Termination by CCI

39. CCI may terminate any transaction arising out of the provision of its Contract Goods to you immediately upon notice to you in any form at any time.
40. CCI's only liability to you upon termination by CCI is limited to a refund of the amount of payments made in advance of Delivery of the Contract Goods which CCI has yet to deliver or provide, after deduction of any Money Owing owing to CCI.

Termination by you

41. You may terminate any agreement arising out of the provision of the Contract Goods upon written notice to CCI sent by post or email to the address you usually use to place Purchase Orders or to any other address that CCI may nominate in writing for that purpose.
42. Even if you terminate a transaction with CCI in accordance with clause 41, you are still liable to pay:
- (a) the full amount that would have been payable upon completion of the transaction provided that CCI has commenced any part of the process involved in completing the transaction agreed, including, without limitation, any administrative function; and
- (b) all amounts payable in accordance with clause 14.
43. Upon receipt of your written termination, CCI will issue an invoice for any amounts

payable pursuant to clause 42 above. The amount of this invoice will become an Overdue Amount if not paid within 14 days after the date of the invoice.

INTELLECTUAL PROPERTY / CONFIDENTIAL INFORMATION

44. If you provide us with specifications, formulations, designs, plans, descriptions, prototypes, samples, tooling or components for or in relation to the Contract Goods or their manufacture or delivery, you agree to indemnify CCI against any claims, actions, demands, costs, damages, or expenses arising from or incurred by reason of any infringement of any Intellectual Property or confidential information arising from the supply or use of such specifications, designs, plans, descriptions, prototypes, samples, tooling or components. CCI is not required to defend any action, claim, or demand or to contest any costs or expenses covered by this indemnity before it is entitled to invoke this indemnity.
45. Unless the Contract Goods are manufactured deriving solely from your Intellectual Property, any Intellectual Property vested in the Contract Goods (or in any processes/formulations developed in the course of manufacturing the Contract Goods) remains the property of CCI and only a limited licence to use the Intellectual Property in the most limited extent necessary to enjoy the benefit from the Contract Goods for which they are designed is included in the provision of the Contract Goods irrespective of whether payment for any Contract Goods includes an amount for design or production.
46. All Intellectual Property, Confidential Information, documents, information systems and know how provided to or disclosed to you by CCI must be treated as confidential by you and you warrant not to lend, copy, use, reverse engineer, analyse, dispose of or sell such documents, information systems or know-how without the prior written consent of CCI.

PRIVACY

47. Without limiting any other clause in these Terms and Conditions, CCI will not, without your consent, use your Personal Information in a way that breaches the

National Privacy Principles set out in the *Privacy Act 1988* (Cth).

DISPUTE RESOLUTION

48. If you consider there is a legitimate dispute between CCI and you (the **Parties**) as to any part of a transaction (other than a quality of make issue which should be dealt with pursuant to clause 27) governed by these Terms and Conditions, you must first go through the following dispute resolution process before the commencement of any arbitration or other legal proceedings.
49. You must give us notice in writing setting out full details of the dispute (**Dispute Notice**).
50. To resolve the dispute:
- (a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will engage in negotiations and discussions in order to seek to resolve the dispute.
 - (b) the Parties must participate in the negotiations and discussions referred to in clause 50(a) in good faith and will use all reasonable endeavours to resolve the dispute. The Parties may also appoint third party consultants to assist in the resolution of the dispute.
 - (c) if the Parties cannot resolve the dispute within the period set out in clause 50(c), you may request that the dispute be referred to mediation upon providing a written undertaking to bear all costs involved in the mediation.
 - (d) if you do not undertake to pay all costs involved in the mediation, then CCI is not obliged to attend any mediation.
51. If the Parties to the dispute cannot agree on a mediator within seven days after a request under clause 50(c), upon the request of either Party the president of the Queensland Law Society Inc or that president's nominee may appoint a mediator.

52. Unless agreed by the mediator and Parties, the mediation must be held within 15 days of a request for the dispute to be referred to mediation being made under clause 50(c) and must occur in a location nominated by CCI unless otherwise agreed.
53. If a Party to a dispute fails to comply with any aspect of clauses 48-52, the other Party does not have to comply with those clauses in relation to the dispute.
54. Nothing in these Terms and Conditions obliges CCI to attempt the dispute resolution process outlined in clauses 48-53 before it can take action against you.

ILLEGALITY AND SEVERABILITY

55. The provisions of these Terms and Conditions will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation is illegal, invalid or unenforceable:
- (a) that provision will so far as possible be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
 - (b) if the provision or part of it cannot be read down the provision or part will be deemed to be void and severable and the remaining provisions of this instrument will not in any way be affected or impaired.

JURISDICTION

56. You irrevocably acknowledge that despite:
- (a) your business or residential location;
 - (b) the delivery place of the Contract Goods; or
 - (c) any other geographical indicia,
- any transaction entered into between you and CCI is entered into under the laws of Queensland.

57. Any dispute that is not resolved in accordance with the process outlined in clauses 48-54 must be resolved in a court of competent jurisdiction in Queensland.

58. These Terms and Conditions or any Contract arising from them will not be interpreted, construed or applied adversely to CCI by reason of their having been drafted by or on behalf of CCI.