

1. TERMS AND CONDITIONS OF PURCHASE

1. Definitions

- (a) "Buyer" means Incitec Pivot Limited or its related companies as indicated in the Purchase Order.
- (b) "Contract" means the contract for the supply and purchase of the Supply formed upon Seller's acceptance of a Purchase Order which incorporates these Conditions of Purchase.
- (c) "Purchase Order" means the Buyer's official purchase order to which these Conditions of Purchase apply, and includes printed purchase orders, whether delivered by hand, mail, facsimile, email or otherwise.
- (d) "Seller" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and sub-contractors.
- (e) "Supply" means goods and/or services described in the Purchase Order.

2. Entire Agreement

- 2.1 By accepting a Purchase Order, Seller agrees to be bound by the Purchase Order and these Conditions of Purchase. These Conditions of Purchase and the Purchase Order together:
- (a) represent the entire agreement between the parties for the supply and purchase of the Supply specified on the face of the Purchase Order;
 - (b) apply to the exclusion of all other terms and conditions, whether contained in the Seller's invoice or conditions of sale or otherwise, proposed by or purported to be applied by the Seller in connection with the Supply, including those contained or referred to in the Seller's tender, confirmation or acceptance of the Purchase Order or otherwise, which terms and conditions are waived by the Seller to the maximum extent permitted by law; and
 - (c) supersede all prior agreements, proposals, tenders, communications or representations in relation to the Supply or the Purchase Order.
- 2.2 The Buyer will not be responsible for any order unless it is issued on a Purchase Order. No variation of a Purchase Order will be effective unless approved in writing by the Buyer. The number appearing on the Purchase Order must be quoted on all invoices, delivery dockets and parcels.

3. Quality

- 3.1 The Seller must ensure and warrants to the Buyer that the Supply:
- (a) conforms with the description provided by the Seller;
 - (b) conforms with any applicable laws and any specifications agreed by the Buyer and the Seller or, in the absence of such specifications, with any applicable standards set by *Standards Australia*;
 - (c) is fit for the Buyer's purposes (if made known to the Seller) and is otherwise fit for the purposes for which this type of supply is commonly supplied;
 - (d) is of merchantable quality;
 - (e) is and will remain free of defects in material, workmanship and design for the period of 12 months from the date of delivery or, if a different period is specified in the Purchase Order, for that period;
 - (f) is new and unused (unless otherwise specified);
 - (g) is free and clear from all liens and encumbrances, charges or third party claims of any kind and the Seller has good marketable title thereto;
 - (h) does not infringe any third party intellectual property rights (including moral rights); and
 - (i) where the Supply includes any services to be provided by the Seller, all such services are performed with the skill, care and diligence that would be expected of a seller experienced in activities of a similar nature to the

Supply and by competent, adequately trained and licensed persons with due care and skill.

- 3.2 The Seller warrants that it has all approvals required by law to perform its obligations under the Contract.
- 3.3 These warranties are in addition to any other warranties or guarantees contained in the Purchase Order or implied by law.

4. Rejection of Supply and Repair or Replacement

- 4.1 The Buyer may reject Supply which does not comply with the Contract upon delivery of Supply or within a reasonable time thereafter. Any acceptance of delivery or payment by the Buyer for such Supply shall not prejudice its right of rejection contained herein.
- 4.2 If, in the opinion of the Buyer (acting reasonably), the Supply (or any part of the Supply) does not comply with the Contract, the Buyer may notify the Seller of such non-compliance and may, at the Buyer's discretion, either:
- (a) return the unsatisfactory Supply to the Seller at the Seller's risk and expense. The Seller shall be liable to the Buyer for the purchase price paid by the Buyer in respect of such Supply (if paid) and any costs incurred by the Buyer in connection with the delivery and return of such Supply; or
 - (b) require the Seller to make good or replace or re-perform (at the Buyer's discretion) such Supply, in which case the Seller shall, within the time specified in the Buyer's notice of rejection of Supply (which time must be reasonable in the circumstances), make good or replace or re-perform (as specified in the Buyer's notice) such Supply with Supply which complies with the Contract and, where applicable, remove the unsatisfactory Supply from the Buyer's site at the Seller's risk and expense.
- 4.3 The warranties contained in Clause 3 will apply in respect of any Supply which is made good, replaced or re-performed by the Seller pursuant to clause 4.2.
- 4.4 The rights under this clause 4 shall not limit the Buyer's other rights under the Contract or otherwise at law.

5. Delivery

- 5.1 The Seller shall deliver the Supply:
- (a) by the due date;
 - (b) for the quantities of each item listed;
 - (c) to the place of delivery; and
 - (d) on the delivery terms, as stated in the Purchase Order.
- 5.2 Time is of the essence insofar as it applies to the obligations of the Seller. If any Supply is not delivered within the time specified in the Purchase Order, the Buyer may, at its discretion, either:
- (a) terminate the Contract; or
 - (b) require the Seller to deliver the Supply by the most expeditious means, and any additional delivery costs shall be borne by the Seller.
- 5.3 If any Supply is not delivered to the place specified in the Purchase Order or otherwise agreed between the Buyer and the Seller, without limiting any other rights that the Buyer may have under the Contract, the Seller will be responsible for any additional expense incurred in delivering the Supply to the correct destination.

6. Title and Risk

- 6.1 Risk of loss in the Supply shall pass to the Buyer upon delivery to the Buyer in accordance with Clause 5, but without prejudice to any right of rejection or other rights which may accrue to the Buyer hereunder. Risk in any Supply which has been notified by the Buyer to the Seller as non-compliant will pass to the Seller upon the Buyer returning or otherwise making such Supply available to the Seller until such Supply is made good or replaced in accordance with the Contract.
- 6.2 Title in the Supply shall pass to the Buyer upon payment in respect of the Supply. Until title in the Supply passes, the Buyer is authorised to use the Supply in the ordinary course of its business.

7. Inspection In Progress and Prior to Despatch

The Seller agrees that the Buyer or its agents may inspect any work performed pursuant to the Purchase Order, while in any stage of engineering, manufacture or installation, and the Supply prior to its despatch. The Seller shall make this a condition of any sub-contracted work.

The Buyer or its agents may reject (acting reasonably) any work performed or being performed or any Supply that does not comply with the Contract, and the work or Supply so rejected shall be re-performed, replaced or made good at no additional cost to the Buyer. Any such inspection shall not relieve the Seller of any obligations under the Contract or at law.

8. Intellectual Property

- 8.1 Any specifications, plans, drawings process information, patterns, designs or any other information supplied by the Buyer to the Seller in connection with the Purchase Order shall remain the property of the Buyer. Any intellectual property rights in the invention or improvement made by the Seller attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs shall vest in the Buyer as and when created and the Seller shall assign all rights, title and interest in such invention or improvement to the Buyer.
- 8.2 The Seller shall:
- (a) without limiting clause 8.1, grant to the Buyer an irrevocable, royalty-free and perpetual licence to use (and allow its related entities to use) any intellectual property rights in the Supply for the purposes of the Buyer's business; and
 - (b) indemnify the Buyer in respect of any loss, damage, expense, claim or liability suffered or incurred by the Buyer as a result of any claim by a third party alleging that the Buyer's use of the Supply in accordance with the Contract infringes that party's intellectual property rights.

9. Price

- 9.1 The purchase price payable by the Buyer in respect of the Supply shall be that specified in the Purchase Order and shall be fixed firm, and cannot be varied without the prior written agreement of the Buyer.
- 9.2 The purchase price shall be based on the delivery terms specified in the Purchase Order unless otherwise agreed.

10. Terms of Payment

- (a) The Seller must send a valid tax invoice (complying with the GST legislation) for payment for the Supply at the times for payment specified in the Purchase Order.
- (b) The Buyer shall pay the amount that is payable to the Seller under the Contract within 62 days from the end of the month in which the invoice is dated following receipt of the Seller's valid tax invoice, unless the Buyer disputes invoice. If the Buyer disputes the invoice, the Buyer will

pay the undisputed part of the relevant invoice (if any) and dispute the balance. If the resolution of such dispute determines that the Buyer is to pay an amount to the Seller, the Buyer will pay that amount upon resolution of that dispute.

- (c) The Buyer may set-off against any amount claimed by the Seller:
 - (i) any amount claimed by the Buyer from the Seller (whether in connection with the Contract or otherwise); and
 - (ii) any amount the Buyer is required by law to withhold or deduct.

11. Sub-Contracting and Assignment

- 11.1 The Seller shall not assign its rights or obligations hereunder or sub-contract any of its obligations under the Contract without the prior written consent of the Buyer, such consent not be unreasonably withheld.
- 11.2 The Buyer's consent to the Seller sub-contracting shall not relieve the Seller of its obligations under the Contract or at law.
- 11.3 Where the Buyer has consented to sub-contracting by the Seller, copies of each sub-contract shall be sent by the Seller to the Buyer immediately after they are issued and the Buyer reserves the right to inspect all sub-contracted work in accordance with clause 7.

12. Packaging, Storage and Hazardous Supply

- 12.1 The Supply shall be properly packed to avoid being damaged during delivery or loading and unloading, and shall be in accordance with any packaging requirements or specifications specified in the Purchase Order or otherwise agreed between the Buyer and the Seller. All packages shall be clearly marked with the Purchase Order number and the place of delivery.
- 12.2 The Seller shall comply with all applicable laws, regulations and other relevant requirements relating to the transport, packaging, storage, and handling of the Supply.
- 12.3 All Supply which are hazardous goods must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets.
- 12.4 All information held by or reasonably available to the Seller regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Supply shall be immediately communicated to the Buyer.
- 12.5 Where required by the Buyer or at law, the Seller shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Supply.

13. Insurance and Indemnity

- 13.1 The Seller shall effect and maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), automotive and other means of transportation/freight liability insurance and products liability insurance upon such terms and for such amounts acceptable to the Buyer as are reasonable in the circumstances of the Contract. All payment of moneys by the Buyer in connection with the Supply will be conditional upon the Seller providing the Buyer with evidence of the currency of such insurance if reasonably requested by the Buyer.
- 13.2 The Seller indemnifies the Buyer, its agents and employees against all claims, costs, expenses, damages, loss or other amounts, including loss or damage to any property, personal injury or death and any penalty imposed for breach of an applicable law, arising out of or in connection with the Supply or the breach or negligence by the Seller or any of its employees, agents or sub-contractors, except to the extent

directly caused by the breach or negligence of the Buyer. The Buyer holds this indemnity on trust for each of its agents and employees. The Seller acknowledges and agrees that is not necessary for the Buyer to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

Each obligation under this clause 13.2 and any other indemnity in the Contract is a continuing obligation separate and independent from the Seller's other obligations and survives termination or expiry of the Contract.

- 13.3 To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), Part 1F of the *Civil Liability Act 2002* (WA), Part IVAA of the *Wrongs Act 1958* (Vic), Chapter 2, Part 2 and Chapter 3 of the *Civil Liability Act 2003* (Qld) (as applicable) is excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights, obligations or liabilities are sought to be enforced as a claim in contract, tort (including negligence), equity, under statute or otherwise at law.

14. Force Majeure

Neither the Seller nor the Buyer shall be liable to the other for default or delay in performing its obligations under the Contract caused by any occurrence beyond its reasonable control, provided that the party affected by such occurrence gives written notice thereof to the other party promptly after the commencement of that occurrence. The affected party shall use all reasonable efforts to end or overcome that occurrence and recommence performance of its obligations under the Contract as soon as possible.

15. Buyer's Confidential Information

The Seller shall keep any confidential information supplied or otherwise communicated to the Seller by the Buyer in connection with the Purchase Order or the Buyer's business, including without limitation any specifications, plans, drawings process information, patterns, designs, and any information derived therefrom confidential and shall not use such information for any purpose other than performing its obligations under the Contract or publish or disclose such information to any third party, without the prior written consent of the Buyer, except as required by law. The Seller must return such information, including any copies, to the Buyer upon Buyer's request.

16. Work on Buyer's Site

If, in providing the Supply, the Seller requires access to, or must carry out work on, a site of the Buyer, the Seller shall only access and use the Buyer's site subject to and in accordance with the conditions of the Contract, any applicable legal requirements and on-site safety policies, rules and directions of the Buyer.

17. Applicable Law

- 17.1 The Contract shall be governed by, subject to and construed in accordance with the laws of Victoria and the parties accept the jurisdiction of the courts of Victoria.

17.2 The Seller:

- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), and the *Bribery Act 2010* (United Kingdom) ("Relevant Requirements"); and
- (b) have and maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Relevant

Requirements, to ensure compliance with the Relevant Requirements, and enforce them where appropriate.

18. Termination

18.1 If a party ("defaulter"):

- (a) fails to comply with any of its obligations under the Contract (and, where the failure is capable of rectification, does not rectify this failure within 14 days of written notification from the other party ("non-defaulter")); or
- (b) is insolvent, becomes bankrupt or becomes subject to any official management, receivership, liquidation, voluntary administration, winding up, external administration or an act or an event which, under the applicable laws has an analogous or similar effect,

the non-defaulter may terminate the Contract by notice in writing and such termination will be without prejudice to the non-defaulter's rights under the Contract or otherwise at law, including, where the Buyer terminates the Contract under this clause, the right to be reimbursed by for any additional costs incurred in obtaining the Supply from another source.

- 18.2 Without limiting any other rights of the Buyer at law or under the Contract, if the Buyer determines that the Seller has breached its obligations under clause 17.2 the Buyer may immediately terminate the Contract by notice to the Seller.

- 18.3 The Buyer may at any time for any reason (including for its convenience where there is no default by the Seller) terminate the Contract by two (2) days prior notice in writing to the Seller in which case:

- (a) the Seller shall cease performing its obligations under this Contract to the extent set out in the Buyer's notice and mitigate any costs incurred by the Seller consequent upon the termination;
- (b) the Buyer shall pay the Seller the purchase price for the Supply provided to the Buyer (to the Buyer's satisfaction) in accordance with the Contract prior to the date of the termination;
- (c) the Buyer shall reimburse the Seller in respect of any direct costs reasonably incurred by the Seller prior to the date of the termination which are directly attributable to the Seller's performance of its obligations under the Contract and which the Seller is not able to mitigate or recoup in some other way;
- (d) the Seller shall have no claim of any kind whatsoever for any loss (including loss of profit), damages or other amounts except as specified in this clause; and
- (e) any rights of the Buyer arising from prior breaches by the Seller shall not be affected.

19. General

- 19.1 Clauses 8, 13, 15 and 17 of these Conditions of Purchase are continuing obligations and survive termination of the Contract for any reason.
- 19.2 The failure or omission of a party at any time to enforce the strict compliance with the Contract is not a waiver of the rights of a party. Any waivers granted by a party must be in writing.
- 19.3 If any part of the Contract is or becomes illegal, invalid or unenforceable in any relevant jurisdiction then they will be read as if that part had been deleted in that jurisdiction only and the remainder shall remain in full force and effect and the intent carried out in full by each party.