

TERMS AND CONDITIONS

07-04-008A

1) DEFINITIONS

In these conditions:

“Vendor” means Hardman Chemical Pty Ltd ABN: 24 167 987 064 which is seller of the goods.

“Purchaser” as identified on the invoice, under any contract, arrangement, understanding between Hardman and the Purchaser (including request to a quotation or letter of offer accepted by the Purchaser).

“Buyer” also refers the person to whom any quotation is made, any person offering to contract with Hardman on these Conditions of Sale, and any person who purchases Goods from Hardman.

“Contract” means Hardman pricing letter or quotation to which the supply of the Goods relates, in writing by the mutual agreement of the parties, the attachments (if any) to that letter and these Conditions of Sale.

“Goods” means all equipment, products and services agreed to be supplied by Hardman to the Purchaser.

“Consumer” means the person or company to whom any quotation is given, any person or company who offers to contract with Hardman on these Terms and any person or company who purchases Products from Hardman.

2) WARRANTIES, GUARANTEES and LIABILITY

Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting, or modifying any condition, warranty, guarantee, right or remedy implied by either State or Federal Fair Trading Act requirements, under the Australian Competition and Consumers Act 2010. Hardman warrants that the Goods supplied are in accord with any relevant specification provided and are of acceptable quality. The Buyer will examine the Goods for defects and shall notify Hardman of any defects in writing within 30 days of delivery. If the Purchaser does not notify Hardman within 30 days of delivery the Purchaser shall be deemed to have accepted the Goods and shall no longer be entitled to exercise any rights in respect of those particular Goods. To the extent permitted by law and notwithstanding anything else in the Contract, where the Buyer is not a Consumer, Hardman excludes all liability whatsoever to the Buyer arising out of or in any way connected with a Contract for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses, or any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.

In the event that Hardman goods are not of merchantable quality, or do not meet the provided specification, the prompt retrieval of the non-compliant Goods at Hardman cost and the replacement of the Goods or the supply of equivalent Goods; the repair at Hardman cost of the Goods or payment of the cost of having the Goods repaired; or the payment by Hardman of the cost of replacing the Goods or of acquiring equivalent and satisfactory Goods.

3) TOTAL AGREEMENT

Unless Hardman otherwise agrees in writing, the Contract contains the only terms and conditions of sale to which Hardman will be bound to in connection with the supply of Goods to the Purchaser. The Purchaser agrees that these Conditions of Sale contained in this document prevail in all circumstances over the Purchasers terms and conditions of purchase or supply (if any).

These Conditions of Sale transcend and exclude all prior and discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods. Without limiting any other mode of acceptance of this Contract exercised by the Purchaser, the Purchaser acknowledges that by accepting delivery of the Goods and/or the credit terms offered by Hardman, the Purchaser by such conduct agrees to be bound by the Conditions of Sale of this Contract. Where the Purchaser is not the final Consumer, these Conditions of Sale will apply to the exclusion of all other terms and conditions of purchase or supply. Hardman may change these Conditions of Sale from time to time. Any changes to the Conditions of Sale will be shown on the Hardman website www.Hardman.com.au, containing the date on which the new Conditions of Sale become effective. It is Purchasers obligation to check the Hardman website or ask Hardman to provide a copy of the most up to date Conditions of Sale at the time you enter into a Contract. By entering into a Contract after the date upon which the new Conditions of Sale become effective the Purchaser accepts and is bound by the changed Conditions of Sale for that Contract and future Contracts. If the Buyer does not accept the changes to the Conditions of Sale, it may notify Hardman to close its account. No amendment or variation of the Contract, other than amendment or variation to the Conditions of Sale as set out is valid or binding on a party unless made in writing and executed by both parties.

Unless otherwise stated, Hardman quotations are open for acceptance for 30 days

4) ADVICES

- a) Clause 4 shall not apply to a Consumer.
- b) The Buyer hereby acknowledges that:
 - i. it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by The Vendor in relation to the Goods or their use or application; and
 - ii. it is responsible for ensuring that Goods that comply with the warranties in clause 3(b) are fit and suitable for its purposes, requirements, processes, plant and equipment.

TERMS AND CONDITIONS

07-04-008A

5) DELIVERY & RESPONSIBILITY TO PURCHASE

- a) Clause 5(c) shall not apply to a Consumer.
- b) The Vendor will make all reasonable efforts to have the Goods delivered to the Buyer on or about the date or within the timeframe forming part of the Contract.
- c) The Vendor shall not be liable for any failure to deliver or delay in delivery for any reason.
- d) The Buyer will be contractually obligated to take delivery of and pay for all Goods ordered by it from The Vendor, and which The Vendor supplies or makes available to the Buyer in accordance with the Contract.

6) RISK

- a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon the unloading of the Goods at the Buyer's premises or such other delivery point agreed in writing by the parties.
- b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to The Vendor that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods. Without limiting the foregoing, the Buyer shall ensure that where the Goods are comprised of bulk chemicals, its storage tanks and vessels and the pipes, hoses, valves and other components used for the storage or transfer of those Goods are properly installed and maintained so as to prevent any death, injury or loss of containment during the processes of unloading the Goods into and storing those Goods in those tanks or vessels.
- c) If The Vendor does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall thereafter be liable for reasonable storage charges payable monthly on demand.
- d) Where the Buyer re-sells or distributes the Goods to any third parties, it shall be responsible for ensuring that it provides detailed instructions to those third parties regarding the safe storage, handling and use of those Goods and any cylinders, drums or other packaging in which those Goods are stored.

7) TITLE

- a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.
- b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of The Vendor and that a fiduciary relationship exists between the Buyer and The Vendor.
- c) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of The Vendor. In addition to any rights The Vendor may have under Chapter 4 of the PPS Act, The Vendor shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and, except where the Buyer is an Individual, shall be entitled without notice to the Buyer and without liability to the Buyer to enter (or have its representatives enter) any premises occupied by the Buyer in order to search for and remove the Goods. The Buyer and its representatives shall provide all reasonable assistance to The Vendor and its representatives for this purpose. If there is any inconsistency between The Vendor's rights under this clause 7(c) and its rights under Chapter 4 of the PPS Act, this clause 7(c) prevails.
- d) The Buyer acknowledges that if it sells, leases or otherwise deals with the Goods or products incorporating the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it shall hold the proceeds of sale, lease or such dealing on trust for The Vendor in a separate account.
- e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell, use or consume the Goods in its operations shall immediately terminate upon the happening of any of the events stipulated in paragraph 10(b)(i)-(v) hereof.
- f) The Buyer acknowledges that The Vendor has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in sub-clause 7(d) until title passes to the Buyer in accordance with this clause 7. This security interest secures all moneys owing by the Buyer to The Vendor under any Contract or otherwise. The Buyer acknowledges that each security interest over Goods (or their proceeds) arising under this clause 7 is a "purchase money security interest" under the PPS Act to the extent that it secures payment of the amounts owing in relation to those particular Goods. The Buyer will do anything reasonably required by The Vendor to enable The Vendor to register these security interests, with the priority The Vendor requires, and to maintain those registrations.
- g) The buyer warrants that in the event that it grants a 'non-purchase money security interest' in the account, within the meaning of the Act, to a Third Party as original collateral for new value, the buyer will:
 - i. on the direction of The Vendor, purchase new inventory from The Vendor with the proceeds of sale, within 7 days of any notice pursuant to the Act, delivered to The Vendor by the Third Party; or
 - ii. on the direction of The Vendor, pay The Vendor all the outstanding amounts in the account to satisfy the Buyer's primary obligation to The Vendor, within 7 days of any notice pursuant to the Act, delivered to The Vendor by the Third Party; whichever of 7(g)(i) or 7(g)(ii) The Vendor so directs.
- h) The Buyer acknowledges and agrees that a failure by the Buyer to comply with a direction by The Vendor in accordance with 7(g)(i) or 7(g)(ii) above will constitute a default and breach of the security agreement between The Vendor and the Buyer which will allow The Vendor to enforce the Buyer's obligations to The Vendor. The security interests arising under this clause 7 attach to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 7 attaches at any later time.

TERMS AND CONDITIONS

07-04-008A

8) PRICE

Unless otherwise agreed in writing, the price charged for the Goods shall be determined and adjusted in accordance with The Vendor's final pricing letter or offer forming part of the Contract. Without limiting its rights in clause 10, The Vendor may in its sole discretion charge interest on overdue invoiced amounts at the rate of 1.5% per calendar month (pro-rated to part of a month), compounding monthly and commencing from the date on which the invoiced amount becomes overdue.

9) FORCE MAJEURE

Deliveries may be totally or partially suspended by The Vendor during any period in which The Vendor may be prevented or hindered from manufacture, delivery or supply through any circumstances outside The Vendor's reasonable control or where such manufacture, delivery or supply is rendered materially more expensive by such circumstances. Circumstances beyond The Vendor's reasonable control shall include, without limitation, strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. The Vendor shall not incur any liability to the Buyer in respect of such suspension.

10) PAYMENT AND DEFAULT

- a) Subject to sub-clause 10(c) hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by The Vendor.
- b) If any of the events set out in (i) to (v) below occur, The Vendor may at its option and absolute discretion withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which The Vendor has or might otherwise have had, and/or open a new trading account for the Buyer with cash on delivery payment terms.
 - i. The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due.
 - ii. The Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets.
 - iii. The Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it.
 - iv. A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer.
 - v. The Buyer experiences any analogous event having substantially similar effect to any of the events specified above. In such circumstances all moneys owing and outstanding to The Vendor on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable. The Buyer shall indemnify The Vendor from and against all costs and disbursements incurred by The Vendor in pursuing payment of any overdue debt owed by the Buyer to The Vendor (including enforcing any security interest arising under this Contract), including without limitation legal costs on a solicitor and own client basis and the costs charged to The Vendor by a debt collection agency and/or bailiff.
- c) Notwithstanding sub-clause 10(a) hereof The Vendor may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of The Vendor shall be final and The Vendor accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

11) CONTAINERS & CYLINDERS

- a) Containers, drums, cylinders and other storage vessels in which Goods are delivered and for which a deposit or rental charge is payable or which are otherwise made available by The Vendor on a returnable basis, remain the property of The Vendor and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of The Vendor from which the Goods were delivered, the full amount of any deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. In the case of containers which are received at a factory or store of The Vendor otherwise than in good order and condition, only such part of the deposit as in the opinion of The Vendor is reasonable, having regard to their actual condition, will be allowed to the Buyer.
- b) Containers in which Goods are delivered and for which a separate charge other than a deposit or rental charge is shown in the face of the invoice are, unless otherwise specified therein or agreed by the parties, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.
- c) No deposit charges are made for cylinders or drums containing compressed gases but such cylinders and drums are not sold to the Buyer and always remain the property of The Vendor. Cylinders and drums must be returned at the Buyer's expense in good order and condition to the factory or store of The Vendor from which they were delivered. Cylinders and drums will be deemed to be still in the Buyer's hands until received at such factory or store. Except where the Buyer is a Consumer and to the extent the law permits, all risks whatsoever associated with the deterioration of those cylinders or drums or those cylinders or drums becoming defective rests with the Buyer absolutely and the Buyer agrees to indemnify The Vendor in respect of any cylinder or drum that is not returned in good order or condition to The Vendor within one month of any demand being made by The Vendor for the return of the cylinder or drum.
- d) The Buyer acknowledges that The Vendor may have a security interest (for the purposes of the PPS Act) in any containers, drums and cylinders described in sub-clause 11(a) or 11(c) and the proceeds of these items. The Buyer will do anything required by The Vendor to enable The Vendor to register these security interests, with the priority The Vendor requires, and to maintain those registrations.

TERMS AND CONDITIONS

07-04-008A

12) PORTABLE MAGAZINES AND PALLETS

Unless otherwise agreed to in writing all portable magazines and pallets on which Goods are delivered remain the property of The Vendor and must be returned to The Vendor at the Buyer's expense in good order and condition to the factory or the store of The Vendor from which they were delivered. Portable magazines and pallets will be deemed to be still in the Buyer's hands until received at such factory or store. Except where the Buyer is a Consumer and to the extent the law permits, all risks whatsoever associated with the portable magazines and pallets rest with the Buyer absolutely and the Buyer agrees to indemnify The Vendor in respect of any portable magazine or pallet that is not returned in good order and condition to The Vendor within one month of delivery of the Goods. The Buyer acknowledges that The Vendor may have a security interest (for the purposes of the PPS Act) in any portable magazines and pallets described in this clause 12 and the proceeds of these items. The Buyer will do anything required by The Vendor to enable The Vendor to register these security interests, with the priority The Vendor requires, and to maintain those registrations.

13) GENERAL LIEN

In addition to any right of lien to which The Vendor may be entitled under the common law, The Vendor shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by The Vendor to the Buyer. The Vendor may in its sole discretion sell any item that is subject to the said lien, provided that The Vendor shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to The Vendor in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by The Vendor. The Buyer acknowledges that The Vendor has a security interest (for the purposes of the PPS Act) in these items, and the proceeds of these items, until the Buyer has paid in full for all Goods supplied by The Vendor in accordance with this clause 13. The Buyer will do anything required by The Vendor to enable The Vendor to register this security interest, with the priority The Vendor requires, and to maintain that registration.

Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, The Vendor may perfect this security interest by possession of the relevant items.

14) WAIVER

No failure to exercise nor any delay or omission in exercising any right, power or remedy by The Vendor operates as or constitutes a waiver. A single or partial exercise by The Vendor of any right, power or remedy does not preclude any other or further exercise by it of that or any other right, power or remedy. A waiver is not valid or binding on The Vendor unless made in writing. No failure by The Vendor to exercise, nor any delay or omission by The Vendor in exercising, any right, power or remedy, nor any representation made or conduct carried out by The Vendor under the Contract or in connection with the supply of the Goods or any of them shall constitute or provide grounds for a common law or equitable estoppels.

15) SEVERANCE

If any provision of these Conditions of Sale or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Conditions of Sale shall not in any way be affected or impaired.

16) GOVERNING LAW

The supply of Goods under these Conditions of Sale is governed by the law of the relevant State and The Vendor and the Buyer submit to the non-exclusive jurisdiction of the courts of the relevant State.

17) TRANSACTION TAX

Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these Conditions of Sale, applies to any supply made under these Conditions of Sale, The Vendor may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 10.

18) CHANGE OF LAWS

Without limiting clause 17, if any of The Vendor's costs of:

- a) manufacturing, importing, supplying or transporting the Goods; or
- b) procuring raw materials, services or inputs directly related to the activities in (a), increase as a result of compliance by The Vendor, The Vendor's affiliates and related bodies corporate, or third parties, with:
- c) the introduction of or any change (including a change in interpretation) in any federal, state, local or other law or regulation or order, including any introduction of or a change in a tax, tax rebate, excise or duty; or
- d) any introduction of or change in (including a change in interpretation in) a scheme for management or reduction of greenhouse gas emissions or concentrations, or water use conservation or management, then The Vendor may, by notice to the Buyer, increase the Price for the Goods to the extent required to pass through such increased costs (which may include, without limitation costs of acquiring permits or credits or costs of required plant modifications or additions). Such cost increase shall take effect immediately from the date such notice is provided.

TERMS AND CONDITIONS

07-04-008A

19) MISCELLANEOUS

Additional terms relating to price, delivery date/time frame, place(s) of delivery, delivery quantities, purchasing deadlines Incoterms, documents and Goods specifications and other commercial matters are as indicated in the pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties.

20) CONFIDENTIALITY

The Buyer and The Vendor agree that neither of us will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act.

21) ENFORCEMENT OF SECURITY INTERESTS

If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interests created under this Contract, the Buyer agrees that the following provisions of the PPS Act will not apply:

- a) section 95 (notice of removal of accession), to the extent that it requires The Vendor to give a notice to the Buyer;
- b) section 120 (enforcement of liquid assets);
- c) section 121(4) (enforcement of liquid assets – notice to grantor);
- d) section 125 (obligation to dispose of or retain collateral);
- e) section 128 (secured party may dispose of collateral);
- f) section 129 (disposal by purchase);
- g) section 130 (notice of disposal), to the extent that it requires The Vendor to give a notice to the Buyer;
- h) paragraph 132(3)(d) (contents of statement of account after disposal);
- i) subsection 132(4) (statement of account if no disposal);
- j) section 134(1) (retention of collateral);
- k) section 135 (notice of retention);
- l) section 142 (redemption of collateral);
- m) section 143 (reinstatement of security agreement).

22) NOTICES UNDER PPS ACT

The Vendor does not need to give the Buyer any notice under the PPS Act (including a notice of a verification statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.