

FILCHEM AUSTRALIA PTY. LIMITED

A.C.N. 003 078 117 - ABN 88 003 078 117

TERMS AND CONDITIONS OF SALE

EFFECTIVE 1st March 2009

1. DEFINITIONS

In these Terms and Conditions of Sale:-

- (a) "the Company" means Filchem Australia Pty. Limited (ABN 88 003 078 117) and includes its agents, employees, successors and assigns.
- (b) "Purchaser" means any person, firm or corporation that has requested the supply of goods or services from the Company and includes employees, agents, successors, administrators and assigns of the Purchaser.
- (c) "goods" means any item, of whatsoever nature, which is available for sale to the Purchaser by the Company.
- (d) "Terms and Conditions" means the terms and conditions contained herein or any amendments in accordance with Clause 2 hereof.
- (e) Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include a firm or corporation and vice versa.
- (f) Headings are provided for convenience of reference only and shall not affect the meaning of or construction hereof.

2. GENERAL

- (a) Notwithstanding anything contained in any order or other document from the Purchaser, these conditions shall be the only terms, conditions or warranties applicable with the exception of any amendments agreed to by the Company in writing.
- (b) The Company may refuse to sell the goods whether or not part of a contract has been performed where the goods are unavailable, for any reason, a non-complying order is received or the Purchaser has defaulted under the Company's terms of credit.
- (c) An order for the sale of goods shall identify the goods ordered, the quantity required and refer to any quotation pursuant to which the order is made. The Company may supply goods that vary from the goods ordered by the Purchaser and the Purchaser must accept the goods supplied provided that such variations are not material.
- (d) Any variation of an order or cancellation of any order must be agreed in writing by the Company.

3. PRICE

- (a) Unless otherwise stated in writing, the price of the goods shall be the price ruling at the date of delivery.
- (b) Any price for goods will not include the Goods and Services Tax ("GST") which will be charged as a separate item.
- (c) The Company shall be entitled, without notice to the Purchaser, to adjust the selling price of the goods whether before or after acceptance of the goods, in the event of and to take account of any increase in the cost of any of the following items:-
 - (i) the manufacturer's price to the Company;
 - (ii) freight, including cost of over-carriage;
 - (iii) insurance;
 - (iv) exchange rates;
 - (v) quarantine, customs or port charges; and
 - (vi) duty, charge or levy in respect of the import of goods or charges in the classification or value of goods for customs purposes.
- (d) All prices are exclusive of delivery and handling charges. Delivery charges are negotiated on a customer by customer basis. The minimum value for orders outside metropolitan areas is \$250.
- (e) A minimum invoice value of \$50 is applicable. Invoices valued below \$50 will attract an administration charge of \$10.

4. PAYMENT AND DEFAULT

- (a) Subject to Clause 4(b) hereof, the goods shall be paid for before delivery irrespective of whether delivery is a part or all of a contract.
- (b) The Company may, in its discretion, agree to sell the goods on credit to the Purchaser.

- (c) If the Company agrees to sell the goods on credit to the Purchaser, unless otherwise agreed by the Company and the Purchaser:-
 - (i) payment shall be made within thirty (30) days from the date of the statement of account;
 - (ii) the Purchaser shall not deduct any sum from the amount due on any invoice or statement for any reason whatsoever.
- (d) (i) If the Purchaser defaults in any payment or commits any act of bankruptcy or being an incorporated company passes a resolution for winding up (except for the purpose of reconstruction) or a petition is presented for its winding up, then all moneys owing and outstanding to the Company on any account whatsoever shall become immediately due and payable.
 - (ii) In addition, the Company may without prejudice to its other rights either suspend further deliveries, require payments in advance for all such deliveries or terminate any contract forthwith by written notice to the Purchaser.
- (e) After forty-five (45) days, outstanding invoices will bear interest at the rate of fifteen per centum (15%) per annum calculated monthly.

5. FUTURE DEALING

Unless otherwise agreed in writing by the Company and notwithstanding any terms appearing in documentation provided by or on behalf of the Purchaser, the terms and conditions appearing herein shall be incorporated by implication into all subsequent agreements by the Company to supply the Purchaser with goods.

6. WARRANTIES

- (a) Nothing contained in this warranty shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the goods of all or any of the provisions of Part V of the Trade Practices Act, 1974 (as amended) or any relevant State or Territory statute which by law cannot be excluded, restricted or modified PROVIDED THAT to the extent that any such statute permits the Company to limit its liabilities to compensate or indemnify any person for breach of a condition or warranty implied thereby, then the respective liabilities of the Company for such breach shall be limited to the replacement of the goods or the supply of equivalent goods.
- (b) Subject to Clause 6(a) hereof and any legislation to the contrary:-
 - (i) representations and agreements not expressly contained herein shall not be binding upon the Company as conditions, warranties or representations; all such conditions, warranties and representations on the part of the Company, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;
 - (ii) the Company shall be under no liability to the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of the Company or the Company's agents;
 - (iii) the Purchaser shall indemnify the Company against any claims made against the Company by any third party in respect of any such loss, damage, death or injury as is set out in Clause 6(b)(ii) hereof and the Purchaser further agrees to indemnify the Company against all losses and expenses which the Company may suffer or incur due to the failure of the Purchaser fully to observe its obligations under this contract.

7. DELIVERY

- (a) The Company will make all reasonable efforts to have the goods delivered to the Purchaser on the date agreed between the Company and the Purchaser as the delivery date.
- (b) Any date named or accepted by the Company for completion, delivery, despatch, shipment or arrival of the goods or for tender of any documents

is an estimate only and does not constitute a condition of the contract or part of the description of the goods.

- (c) The Company shall be under no liability whatsoever should delivery not be made on such date and shall not be liable for any loss (including consequential loss) for failure or delay in delivery.
- (d) In no case shall the Company be liable for any amount payable by the Purchaser to a third party as a result of a failure or delay in delivery by the Company due to any cause whatsoever.

8. RISK

The risk in the goods purchased shall, unless otherwise agreed in writing, pass to the Purchaser upon delivery to the Purchaser or his agent or to a carrier commissioned by the Purchaser.

9. RETENTION OF TITLE

- (a) Ownership of the goods shall remain with the Company, which reserves the right to dispose of the goods, until such time as:-
 - (i) payment in full for all the goods has been received; and
 - (ii) payment in full of all other moneys owing or unpaid by the Purchaser to the Company including moneys in respect of goods previously or subsequently supplied to the Purchaser by the Company.
- (b) If the Purchaser fails to pay any amount of the Purchaser's total indebtedness to the Company under these Terms and Conditions when it is due to the Company or, an event of default as specified in Clause 9(c) hereof occurs, the Company may without prejudice to any of its other rights and remedies recover and/or resell the goods or any of them and may enter upon the Purchaser's premises by its servants or agents for that purpose.
- (c) Until full payment the Purchaser shall store the goods in a way that clearly manifests the Company's title.
- (d) The Purchaser acknowledges that until its total indebtedness under these Terms and Conditions to the Company is discharged, it holds the goods as bailee of the Company and that a fiduciary relationship exists between them.
- (e) In the event of sale of the goods to a customer, the Purchaser in its position as a fiduciary shall:-
 - (i) assign to the Company the benefit of any claim against the customers; and
 - (ii) account fully to the Company for the proceeds of the sale (unless and until the Purchaser's total indebtedness to the Company under these Terms and Conditions is discharged).

10. FAULTY GOODS AND CLAIMS FOR RETURN OR CREDIT

- (a) The Purchaser shall inspect the goods immediately upon delivery and carry out any tests that a prudent Purchaser would carry out.
- (b) The Purchaser shall give written notice to the Company of any alleged or irregularity in quantity or description, or any faults or defects within five (5) working days from the delivery.
- (c) If no notice is given by the Purchaser to the Company in accordance with Clause 10(b) hereof, the Purchaser shall be deemed to have accepted the goods and the Purchaser shall lose any right to reject the goods or claim any remedy whatsoever (including damages) against the Company.
- (d) All claims for credit for damaged, defective or short delivery goods or for goods to be returned must be notified to the Company immediately.
- (e) The Company will not accept claims that are not notified in accordance with Clause 10(d) hereof within five (5) working days of delivery.
- (f) The goods must be returned, at the cost of the Purchaser, to the Company site from where they were purchased.
- (g) Goods returned for credit and accepted by the Company will be subject to handling charges of an amount equivalent to ten per centum (10%) of the credit claimed.
- (h) If goods are not returned after fourteen (14) days of notification of the claim to the Company the Purchaser shall not be entitled to any credit.
- (i) Unless otherwise agreed, no request for credit will be approved until a representative of the Company has inspected the goods on which the credit is claimed.
- (j) Until the inspection referred to in Clause 10(i), the Purchaser is responsible for maintaining proper care of the goods in question.

(k) The Company will not accept claims for damaged or defective goods or for goods returned where the Purchaser has not maintained proper care of the delivered goods.

- (l) The Purchaser acknowledges and agrees that goods produced/ manufactured on the Purchaser's instruction, goods damaged or lost in transit, non-returnable goods ordered specifically for the Purchaser, goods altered or damaged by the Purchaser are not acceptable for return or credit.

11. LIABILITY OF THE COMPANY

Any liability of the Company with respect to the goods shall arise in accordance with the Terms and Conditions only and shall be limited to the replacement of the goods or the payment of the cost of replacing the goods or acquiring equivalent goods, as the Company may elect.

12. CLAIMS BY THE PURCHASER UPON THE COMPANY

The Purchaser shall not be entitled to make any claim upon the Company if any amounts are outstanding from the Purchaser to the Company.

13. SEVERABILITY

In the event that any term or provision cannot be given effect for any reason then the term or provision or part which cannot be given effect shall be severed and read down restrictively and the remaining terms and provisions shall remain valid and binding on the parties.

14. WAIVER

No waiver of a term or provision of any contract shall be construed as a continuing waiver of the term or provision.

15. LAW AND JURISDICTION

All contracts between the Company and the Purchaser shall be governed by and construed in accordance with the laws of New South Wales.

16. FORCE MAJEURE

- (a) Deliveries may be totally or partially suspended by the Company during any period in which the Company may be prevented or hindered from making delivery through any circumstances outside its reasonable control, including but not limited to strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery.
- (b) During the period of total or partial suspension of delivery, the purchaser may purchase elsewhere, at its own cost and risk, such quantities or alternative goods as may be necessary to cover its requirements during such period in substitution for the goods not delivered by the Company.
- (c) Whether or not the Purchaser makes these arrangements, the Company shall not be under any liability in respect of such suspension and in particular the Company shall be under no obligation to deliver at any future date any goods not delivered during the period of suspension.

17. ADVICE

- (a) Subject to Clause 6 hereof, any advice, recommendation, information or assistance provided by the Company in relation to the goods or their use or application (except to the extent that the Company has expressly agreed in writing to provide the same) is given in good faith and is believed by the Company to be appropriate and reliable.
- (b) Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Company.