

Terms and conditions

These Terms and Conditions of Sale are the exclusive contract between Buyer and GLYCOL SALES AUSTRALIA (the "Seller"), there are no terms, understandings, agreements, other than those stated herein. The Seller's acceptance of a written order placed by the Buyer, the Seller's commencement of work on the Products subject to Buyer's order, shipment of the Products, or performance of all or a portion of the services subject to a Buyer's order, whichever occurs first, shall constitute conclusion of an agreement between Buyer and the Seller and these Terms and Conditions will apply without any additional or different terms. These Terms and Conditions may not be altered, amended, or waived except in writing signed by a duly authorized representative of the party to be bound thereby. The Seller's acceptance of Buyer's order is subject to Buyer's acceptance of the express Terms and Conditions contained herein. If any provisions of Buyer's purchase order or other writings are different from or are otherwise in conflict with these Terms and Conditions, these Terms and Conditions shall govern and the terms contained in Buyer's purchase order or other writings are expressly rejected by the Seller.

1. GENERAL

1.1 Acceptance and enforceability

All quotations, offers and tenders are made subject to the following conditions.

1.1.1 The Seller is only bound by those confirmations sent to the Buyer. The Seller shall not be bound by any confirmation of order made orally. Any oral offers or commitments will bind the Seller only after and to the extent that the Seller has confirmed them in writing. All offers or quotations of the Seller, however they are made, will be free of obligation unless provisions to the contrary have been laid down in writing.

1.1.2 E-mail messages of the Seller will qualify as a written statement/notification, except for the purpose described in clause 1.1.

1.1.3 No variation to any confirmed order shall have effect unless signed in writing on behalf of the Seller by an authorized representative of the Seller.

1.2 Modification of the Products

1.2.1 As long as the offer has not been accepted, the Seller reserves the right to make at any time any modifications that it deems useful to the Products, and to alter without prior notice the models defined in its prospectuses, catalogues or any other documents. The Seller is at all times entitled to effect adjustments in the Products to be delivered, in order to improve them or comply with government regulations.

1.2.2 The Seller is at all times entitled to effect adjustments in the Products to be delivered or the services to be performed, in order to improve them or comply with government regulations.

1.3 Outstanding value

Under no circumstances may the Seller be bound to accept any order that may give rise to an outstanding bill higher in amount or in term than the outstanding bill preceding said order, without obtaining corresponding guarantees from the Buyer.

1.4 Cancellation of an order

The Buyer has no right to cancel Products or services ordered, with the exception that the Buyer may cancel Products or services ordered within two weeks from the date when the order was received by the Seller, provided that the Seller has not yet issued the acknowledgement of order by the day of receipt of the Buyer's cancellation. The acknowledgement of order shall be deemed issued on the day that it is dated. In the event of full or partial cancellation of an order by the Buyer, the Seller will be entitled to compensation of 15% of the total order price, unless otherwise agreed by the parties in writing.[top]

2. PRICES

2.1 Unless otherwise agreed in writing, all prices are quoted exclusive of GST and other taxes or charges, transport and insurance costs and all other costs, to be determined in accordance with these terms and conditions. Buyer shall reimburse the Seller for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of Products, which the Seller is required to pay. The Seller has the right to issue a supplementary invoice in respect of any increase in tax or duty between the date of dispatch and the date of delivery for which the Seller may be liable to the appropriate authorities. All payments must be made in mutually agreed currency.

2.2 Subject to Conditions 2.4 and 2.5, the price for the services or each delivery of goods will be as detailed in the relevant Order, as amended by the relevant confirmation of order or, if no pricing information is contained therein, will be in accordance with the Seller's price list in force from time to time.

2.3 The Seller reserves the right to alter the prices, at any time, until the order is confirmed.

2.4 The Seller shall provide the Buyer with 15 days advance notice of any price increase. The Buyer shall be entitled to cancel its order by providing written notice to the Seller, only if the goods or services provided under that relevant Purchase Order are provided by the Seller out of the Seller's normal stock offering and do not form part of a particular stocking arrangement, such notice to be given within 2 days of the Buyer receiving notice of the price increase. If written notice of cancellation is not received by the Seller within 2 days then the Contract will continue in force.

2.5 The Seller may adjust prices at any time where the Seller experiences increased costs of providing the Products to the Buyer, as a result of any of the following:

- (i) governmental interventions, including but not limited to, governmental orders or policies, changes in taxes, tariffs, rebates and currency exchange; and/or
- (ii) uncontrollable raw material costs increases due to energy shortage, product shortages or breakdowns in manufacturing outputs and unforeseen increase costs of importing products rendering the terms of the contract economically unviable; and/or
- (iii) increased costs of transportation.

3. PAYMENT

3.1 Payment term

3.1.1 Payment terms are net thirty (30) days from date of invoice. Past due balances are subject to a late payment charge of 1 1/2% per month, or the maximum amount permitted by applicable law, whichever is less and the Seller has total discretion as to whether there will be any set-off or deduction. Buyer shall pay all charges, costs and legal fees incurred in collecting amounts owed.

3.1.2 Buyer's default in payment shall automatically give rise to the immediate payability of any amounts due for other deliveries, or for any other cause, if the Seller does not cancel the corresponding Contracts. Alternatively, the Seller shall be entitled to suspend any or all further deliveries and the performance of services under the Contract until the full payment of the amounts due.

3.1.3 Under no circumstances may payments be suspended in any way without the Seller's prior written consent. No disputes arising under the Contract or delays (other than delays acknowledged by the Seller in writing) shall interfere with prompt payment by the Buyer.

3.1.4 The Seller reserves the right, at any time, to withhold credit facilities from or to limit the amount or period of credit it will grant to Buyer. If the Seller has granted the Buyer credit, the Buyer shall no later than 7 days after Seller's written request, provide the Seller with a bank guarantee acceptable to Seller sufficient for the proper fulfilment of the Buyer's obligations under the Contract. If the Buyer fails to do so the Seller has the right to immediately terminate the Contract.

3.2 Installments

Where Products are delivered by installments or the services performed in stages the Seller may invoice each installment or stage separately and the Buyer shall pay such invoice in accordance with these conditions.

3.3 Legal Proceedings

In the event that the Seller is fully or largely successful in legal proceedings to which the Buyer is a party, the Buyer will be obliged to compensate all costs incurred by the Seller in connection with such proceedings, also to the extent that such costs exceed the cost award made by the court. The Seller may invoke this clause irrespective of whether the Buyer has appealed against the relevant judgment at the court of appeal or at the Highest Courts. [top]

4. PACKAGING CONDITIONS

4.1 The Seller or the Seller's manufacturers or suppliers provide written instructions and/or advice to the Buyer for the safe use of the Seller's Products and containers (such as crates, drums, boxes, cases or carboys) and other types of packaging (further copies available on request). The Seller accepts no liability whatever for any losses, costs or other claims caused where the Buyer uses its own containers or caused as a result of the Buyer's failure to use the Sellers' goods, containers or other packaging in accordance with the written safety instructions and/or advice.

4.2 Where the Seller delivers the Products to the Buyer, the Seller ensures that all packaging in the form of crates, drums, boxes, carboys etc. are suitable to protect the Products from damage during delivery. The Seller can accept no liability for any loss or damage caused where such packaging is used for the further transportation of the Products or other unconnected goods and the Buyer must satisfy himself that the goods are safely packaged for such transportation.

5. TRANSPORT AND DELIVERY

5.1 Delivery timeframe and location

5.1.1 Time for delivery of the Products and completion of the services is given as accurately as possible but is not guaranteed. In the event that the Seller is unable to deliver the goods or services at the indicated time of delivery/completion the Seller shall use its reasonable endeavors to notify the Buyer of the delay. Upon written notice by the Seller, the Buyer agrees to negotiate in good faith with the Seller to agree on a new delivery date. Regardless of the circumstances, timely delivery may only occur if the Buyer is up-to-date with all of its obligations to the Seller.

5.1.2 Except where otherwise agreed, the Seller shall deliver to the premises stated in the Contract. Acceptance of any change to the delivery point requested by the Buyer shall be at the Seller's sole discretion and the Buyer shall be liable for any additional expenses incurred by the Seller as a result of such change.

5.2 Risks associated with delivery, transport and reception

5.2.1 Where the Seller delivers goods and containers/packaging to the Buyer, the Products shall, unless otherwise agreed in the Contract, be delivered Ex Works. The Seller accepts no liability whatever for any losses, costs or other claims in connection with the transfer of the Products and containers/packaging from the Seller's point of delivery to the Buyer's storage location.

5.2.2 Regardless of the delivery arrangements, including deliveries shipped carriage free and notwithstanding the reservation of title clause, the transfer of risks to the Products and/their packaging to the Buyer shall take place as of the shipping from the Seller's warehouses. Accordingly, the Products and/or their packaging travel at the risk of the Buyer, who shall be responsible, in case of damaged, lost or missing items, for communicating any reservations or for exercising any remedy with the carriers responsible.

5.2.3 Where the Buyer collects the goods from the Seller, although the Seller may inspect any collection vehicle used by the Buyer, the Seller shall not be responsible for any losses caused or claims made to the Buyer as a result of the unsuitability/inappropriateness of the vehicle in any respect whatsoever.

5.2.4 If the Buyer does not promptly discharge road tankers used to deliver the Products to the Buyer, the Buyer shall indemnify the Seller against any liability whatsoever, including, but not limited to, a liability to pay demurrage or similar payments owed to the owner/operator of the road tanker in respect of the consequent delay.

5.2.5 Where the Buyer receives goods via a Power Take Off delivery system, it is the Buyer's responsibility to ensure that all operating instructions and health and safety procedures are followed at the point of delivery and the Seller accepts no responsibility for any claims, losses, costs or damage caused at and from the point of transfer to the Buyer's installation.

5.2.6 The Buyer will sign a delivery slip "for acceptance" when the Products are made available for delivery. Any acceptance shall take place on the doorstep of the place of delivery. Any instruction given by the Buyer to the employees of the Seller or the Seller's carrier to allow the Products in its facilities or to have it allow any handling in any way shall take place at the Buyer's own risk.

5.3 Quantity

5.3.1 The Seller is not obligated to deliver in any month more than a proportionate part of the maximum quantity specified, determined by dividing such maximum quantity by the total number of months included in the period of performance. When in the opinion of the Seller there is a period of shortage of supply of said products for any reason, the Seller may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified

5.3.2 The Seller reserves the right to deliver less or more than the quantity of Products ordered by up to 5 % and the Buyer shall pay for the quantity actually delivered. Measurements of volume or weight are also subject to variation as a result of normal manufacturing or packing processes and the Buyer must accept such variations up to 5 % of the stated measurement.

5.3.3 Failure by the Buyer to take delivery of any one or more instalments of Products delivered in accordance with the Contract shall entitle the Seller to terminate the Contract either in whole or part.

5.3.4 Ex-stock goods are offered subject to the same not having been sold elsewhere prior to receipt of unqualified acceptance of the Seller's quotation.

6. WARRANTIES

6.1 The Seller warrants that the Products conform to the specifications published by the Seller or to the manufacturer's specifications (if any) at the time of delivery. The Seller warrants that services provided by the Seller will be consistent with the Seller's standard specifications or, if none, with the Seller's standard practices. Buyer acknowledges that the Seller acts as a distributor for Products not branded by the Seller (Resale Products).

6.2 THE SELLER MAKES NO FURTHER WARRANTIES WHATSOEVER CONCERNING THE PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES EXPRESS OR IMPLIED. THE SELLER EXPRESSLY EXCLUDES WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

6.3 The Buyer is, therefore, solely responsible for ensuring, prior to placing the order, that the Products are fit for the particular purpose envisaged by the Buyer. The Buyer is required to inspect the Products, immediately upon delivery, for compliance with the order with respect to their quantity and quality. This inspection by the Buyer shall take place in any event prior to the release or the production of a Product. The Buyer shall take reasonable precautions to prevent any contamination of Products caused through no fault of the Seller during carriage or otherwise from entering the Buyer's production process. Moreover, Buyer undertakes to not use a Product delivered by the Seller in a production cycle without ensuring in advance that the Product corresponds to the required specifications for the proposed production. The Buyer acknowledges that it is relying on its own expertise and knowledge and not that of the Seller in entering the Contract.

6.4 Recommendations for use of the Products, technical advice, whether given in writing, orally, or to be implied from results of tests carried out by the Seller, are based on the Seller's current knowledge at the time. No warranty, either express or implied, is made by the Seller regarding the validity of the recommendations or the results obtained therefrom.

6.5 Unless the Seller has specifically confirmed to the Buyer that the Products are suitable to be mixed with any other goods, the Seller accepts no liability for admixture of the goods with any other goods and it shall be the Buyer's sole and entire responsibility to ensure that the products concerned and the containers to be used are entirely suitable for such admixture and/or for transfer of such.[top]

7. REACH

7.1 The Buyer agrees to comply with all of its obligations under the EU Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). In particular, the Buyer shall communicate to the Seller any new information on hazardous uses of the goods and possible inadequacy of recommended risk management measures related to substances and/or mixtures that they contain.

7.2 For all dangerous substances and mixtures covered by REACH, the Buyer will receive safety data sheets, which may include one or more exposure scenarios attached. The Buyer will check whether their current use of a particular substance and/or mixture is covered by the relevant safety data sheet and related exposure scenarios and whether the Buyer complies with the conditions described on the relevant safety data sheet and exposure scenarios.

7.3 Identified uses under REACH do neither represent an agreement on the corresponding contractual quality of the goods nor a designated use under any Contract.

7.4 If the Buyer intends to use a dangerous substance and/or mixture outside the conditions described in the relevant exposure scenario, or if the Buyer's use is not covered by that exposure scenario, the Buyer should make its use and/or use conditions known to the Seller as soon as possible. The Seller will then contact the relevant supplier to seek to obtain from the supplier of the substance and/or mixture the exposure scenario that covers the Buyer's particular use conditions. Any use by the Buyer of the substance or mixture outside the conditions specifically described on the safety data sheet and related exposure scenario shall be at the Buyer's exclusive risks and the Seller disclaims any liability thereof.

7.5 Alternatively, the Buyer can seek their own registration for a specific use of a dangerous substance and communicate the registration reference to the Seller in order to continue supplies of dangerous substances for uses not identified on the relevant exposure scenario.

7.6 The Seller may not be held liable to the Buyer in case of failure or delay in the performance of its supply obligations, if the failure or the delay is due to orderly compliance of regulatory and legal obligations in connection with REACH being triggered by the Buyer's respective communications.[top]

8. LIMITATION OF LIABILITY

8.1 The failure of Buyer to inspect the Products for compliance with the specifications guaranteed by the Seller pursuant to Condition 6.3 shall trigger the liability of Buyer for all consequences which could have been avoided had the inspection taken place. Also, the acceptance by Buyer of a Product whereas the specifications thereof appear, after inspection by Buyer, not to correspond to the specifications of the Product ordered shall cover and replace the original order. The Seller shall in no event be liable under the foregoing circumstances.

8.2 EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL THE SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, PRODUCT LIABILITY, CONTRIBUTION OR ANY LEGAL THEORY, (WHETHER OR NOT REASONABLY FORESEEABLE AND EVEN IF THE SELLER HAD BEEN ADVISED OF THE POSSIBILITY OF THE BUYER INCURRING THE SAME) AND IN NO EVENT WILL THE SELLER BE LIABLE FOR LOST PROFITS, COSTS OR LOSSES NOT ASSOCIATED WITH DIRECT PHYSICAL DAMAGE TO PROPERTY FOR ANY CLAIMS MADE UNDER OR RELATED TO THE SALE OF PRODUCTS OR SERVICES TO BUYER.

8.3 EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN NO EVENT SHALL THE SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

8.4 The Buyer shall in order for a claim under the Contract to be valid, subject to what is otherwise stated in the Contract, make such claim within 30 days from when the Buyer discovered or reasonably should have discovered the facts supporting the claim, and at the latest within 30 days from the termination, cancellation or expiry of the Contract.

8.5 Buyer agrees to defend, indemnify and hold the Seller, its officers, directors, agents, and employees harmless from all claims, demands, actions and causes of action relating to personal injury or property damage to third parties, including attorney's fees and actual costs ("Claims") incurred as a result thereof, to the extent of its negligence or arising after delivery of the Products to Buyer.

9. CLAIMS AND REMEDIES

9.1 Except in cases of gross negligence or willful misconduct, the Seller's liability for nonconforming Products is exclusively limited, at the Seller's option, to replacement of the defective Products or refund of the purchase price of such Products. For deliveries in excess or in shortage, the Buyer's sole remedy shall be to take back the excess goods or to effect a new delivery at no additional cost for the Buyer. Except in cases of gross negligence or willful misconduct, the Seller's liability for any defective or negligent service is limited to the Seller re-performing the service or a refund of an amount not to exceed the amount paid for the service, or, if the services were provided free of charge, to pay an amount not to exceed the amount paid for the Products to which the services related in the 12 months prior to the occurrence of the liability

9.2 Any claim for shortage or non conforming Products must be made in writing to the Seller within 5 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within five (5) days after the date upon which the Product was to be delivered. As to any claim not reasonably discoverable within such five (5) day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by the Seller within twenty (25) days after Buyer's receipt of the Products. Failure of the Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim. Products may not be returned without the Seller's permission and transportation for return will not be paid by the Seller unless authorized in advance.

9.3 No liability can be accepted for damage in transit unless the Buyer notifies the site from which the Products were ordered or the Buyer's usual customer representative within 3 days of receipt of the Products, and confirms by notification in writing within 7 days of receipt of the Products. Where the Seller is notified of the damage to the Products in accordance with this provision, the Seller shall repair or replace the Products at its sole option.

10. FORCE MAJEURE

10.1 The Seller is not liable for nonperformance or delay in performance caused by circumstances beyond the Seller's control ("Force Majeure Event"). A Force Majeure Event includes, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, labour disputes (including within its own workforce), lockouts, injunctions, accidents, Product short supply, unforeseen shutdown of major sources of supply, breakage of machinery or apparatus, unavailability or shortage of materials or vehicles, failure or shortage of power supplies, failure of any third party to supply the Seller or national emergency, (b) the Seller's inability to obtain at prices the Seller deems in its discretion to be commercially reasonable, the Product, fuel, power, raw materials, labor, containers or transportation facilities, (c) the occurrence of any unforeseeable contingency making performance impracticable, or (d) compliance in good faith with any applicable governmental statute, regulation, or order. Any delivery so suspended may be cancelled by the Seller at any time while under the Force Majeure Event, without liability to the Buyer.

10.2 In the event that the Seller has already partially fulfilled its obligations upon the occurrence of force majeure, or is only able to fulfill its obligations in part, it will be entitled to separately invoice the part already supplied or the part that can still be supplied and the Buyer will be obliged to pay that invoice as if were a separate Contract[top]

11. TERMINATION

Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by the Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Products because Buyer is unable to provide adequate security for the performance of its obligations upon the Seller's first request.[top]

12. PRODUCT STEWARDSHIP

Buyer agrees that Products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. The Buyer shall use, transport, store and transform the Products, in compliance with (a) all applicable laws and regulations on environmental protection, public health and the protection of humans and property and (b) safety instructions of the Buyer. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the Products. Buyer further agrees to deliver the most recent edition of Product literature, including MSDSs (Material Safety Data Sheets), to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport and dispose of Products safely.[top]

13. RETENTION OF TITLE

13.1 The Seller shall retain title over all Products sold to Buyer pursuant to these Terms and Conditions of Sale until the Seller receives by Buyer full payment of the amounts due from it to the Seller under the Contract and under all other Contracts between the Seller and the Buyer (including any sums due under contracts made after this Contract) whether or not the same are immediately payable.

13.2 The Seller may recover Products in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licenses the Seller, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that Condition 13.4 below is being complied with by the Buyer or of recovering any Products in respect of which title has not passed to the Buyer.

13.3 Should the Seller recover the Products under clause 13.2, the Seller shall only reimburse to the Buyer advanced payment after having set off such amount with damages owed by the Buyer to the Seller (either as a consequence of the penal clause or for expenses incurred for recovering the Products and/or repairing them).

13.4 Until title to the Products has passed to the Buyer under these conditions it shall possess the Products as fiduciary agent and bailee of the Seller. The Buyer shall store the Products separately from other goods and shall ensure that they are clearly identifiable as belonging to the Seller. During such time as the Buyer possesses the Products with the Seller's consent, the Buyer may in the normal course of business sell or hire the Products as principal but without committing the Seller to any liability to the person dealing with the Buyer.

13.5 Until Seller's revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to sell, process or recast the reserved Products within the ordinary course of business. In the event of a sale the Buyer herewith assigns to the Seller its resulting claims against the customer to payment of the purchase price. If the reserved Products are sold by the Buyer together with other objects not supplied by the Seller, this assignment shall only apply up to the value of the reserved Products sold as specified in Seller's invoice. If the Buyer processes the said Products together with other goods not owned by the Seller, we shall acquire co-ownership of the new product, Seller's proportionate share being equivalent to the invoice value of the Products subject to reservation of title relative to that of the other processed goods at the time of processing. If the Buyer acquires sole ownership through processing, combining or mixing, he shall here and now transfer to the Seller co-ownership proportionate to the value of the Products subject to reservation of title relative to that of the other goods at the time that they are processed, combined or mixed. Until Seller's revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to collect the claims assigned to the Seller. At Seller's request it is obliged to notify its customers of the advance assignment and to provide the Seller with the information and documents necessary to assert the claim.

13.6 The Buyer is required to inform the Seller immediately of any right exercised by third parties on the Products that are covered by the reservation of title or, if the Buyer is aware thereof, of the intention of any third parties to exercise their rights on the aforementioned Products.

13.7 If reservation of property rights to any consignment sent abroad is not permitted on the relevant foreign territory in the above-mentioned form, our rights sets forth in the foregoing shall be limited to the scope permitted by law in the Buyer's country.[top]

14. APPLICABLE LAW AND DISPUTE REVOLUTION

14.1 The Contract shall be governed and interpreted according to Australian law without regard to its conflict of law rules. The United Nations Convention on International Sale of Goods shall not apply. Shipping terms used in this Agreement shall be as defined in the International Chamber of Commerce's Incoterms, 2020 edition.

14.2 Subject to Condition 14.3 below, any and all disputes, controversies and claims arising out of or in connection with any offer, order or Contract shall be settled by arbitration in accordance with the rules of the Australian Centre for International Commercial Arbitration. Information disclosed during arbitration proceedings and the arbitration award is subject to the confidentiality obligation in Section 15.2. Either party may also without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of an arbitrator (or pending the arbitrators determination of the merits of the controversy).

14.3 In case of the Buyer's non payment of clear and due debt the Seller shall, regardless of what is provided in Condition 14.2 above, be entitled to initiate proceedings with a competent court or authority in the country where the Buyer is incorporated or in a country where the Buyer may otherwise have assets.

15.MISCELLANEOUS

15.1 Intellectual Property

All trade marks, registered or unregistered design rights, copyrights, confidential information such as colour schemes, knowhow and other intellectual property rights of any nature ("Intellectual Property") in all goods or services supplied by the Seller are owned by the Seller and/or its suppliers. The Seller reserves the right at any time to require Buyer forthwith to discontinue the use in any manner whatsoever any such trade marks or other Intellectual Property.

15.2 Confidentiality

The Buyer undertakes not to make any unauthorized disclosure of any confidential information regarding the goods or services provided by Seller or the Contract. Confidential information shall mean any information, technical, commercial or of any other kind, whether written or oral, except such information which is or will be publicly known or which has come to or will come to the public knowledge in any way other than through the Buyer's breach of this secrecy undertaking. The Buyer ensures that the Buyer's employees will not disclose confidential information to third parties. The Buyer shall ensure that employees likely to get access to confidential information covenant to keep such information confidential to the same extent as the Buyer according to this confidentiality undertaking.

15.3 Severability

If any provision of a Contract is held invalid or unenforceable, in whole or in part, in any jurisdiction, that provision will be void in that jurisdiction to the extent it is contrary to applicable law in that jurisdiction and the invalidity or unenforceability of one or more provisions of the Contract shall not affect the validity of the Contract as a whole. The Parties hereto shall substitute such provision by a valid one, which in their effect come close to the unenforceable provision, reasonably assuming that the Parties would have contracted the Contract also with this new provision.

15.4 Assignment

A Contract or rights and obligations under any Contract are not assignable by the Buyer without the consent of the Seller. A Contract (as a whole or partially) or rights and obligations under the Contract may be freely assigned, transferred or delegated by the Seller to any third party.

15.5 Waiver

A Party's delay or failure to enforce or insist on strict compliance with any provision of the Contract will not constitute a waiver or otherwise modify the Contract. A Party's waiver of any right granted under the Contract on one occasion will not (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

15.6 Independent contractor

Nothing contained in these Terms and Conditions or in any Contract shall create a joint venture or establish a relationship of principal and agent or any other relationship of a similar nature between the Parties. No Party shall have power to act on behalf of or to bind the other in any way.