

PAYMENT TERMS

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the Supplier) from the end of the month of invoice.
2. Chemmongers Pty Ltd ABN 72 612 326 431 trading as Realchem Australia and its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) ("**Supplier**") may, at any time, unilaterally vary these Terms and Conditions of Sale ("**Terms**") in their absolute and unfettered discretion.
3. Should you ("**the Customer**") not pay for goods or services supplied by the Supplier in accordance with these Terms, or as agreed in writing by the Supplier from time to time, the Supplier is entitled to charge an administration fee of 10 per cent of the amount of the invoice payable per year, or part thereof, from the date on which the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Customer.
4. The Supplier reserves the right to vary these Terms and to require payment in cash before delivery should the credit-worthiness of the Customer at any time become, in the Supplier's opinion, unsatisfactory.
5. Any monies paid by the Customer shall be firstly applied to the payment of all goods and services taxes as provided in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* ("**GST Act**") owing to the Supplier, secondly to payment of all interest owing (if any) and thirdly in reduction of the purchase price. Where monies received are in reduction of the purchase price, they will be applied to indebtedness for the goods which have been outstanding for the longest period, so that the balance owing at any time shall represent the goods most recently sold and invoiced. The date of the invoice shall be the sole indicator of the date of sale.
6. No amount shall be deemed to be paid unless paid by cash, bank cheque, or credit card or until the Customer's cheque has been paid by their bank or electronic funds transferred and credited to the Supplier's bank account.

DELIVERY OF GOODS

7. The Supplier agrees to make delivery or arrange transport of goods on behalf of the Customer at the Customer's expense in accordance with the Customer's written instructions.
8. Unless otherwise agreed in writing, the mode of transport is at the discretion of the Supplier.
9. Dates for delivery are estimates only and subject to the availability of goods. The Supplier shall not be liable to the Customer in any manner whatever for any delays in delivery.
10. The Supplier accepts no responsibility for loss, damage or non-delivery arising by reason of riot, civil commotion, war, whether declared or not, accident, shortened hours of labour, strikes, lock-outs, storm, flood, fire or any other circumstances beyond the direct control of the Supplier.
11. The Supplier may deliver such portion of the goods as may currently be available and the Customer shall accept such portion of the goods. Alternatively the Supplier may, by notice in writing, extend the time for delivery or cancel all or part of the relevant order invoiced to the Customer.

RISK AND INSURANCE

12. Risk shall pass to the Customer, or to any agent or contractor of the Customer, whichever is the sooner, immediately on delivery of the goods.
13. The Customer shall be responsible for insurance of all purchased goods from the time of delivery, including all risk of loss or damage, to, or deterioration of the goods, from whatever cause.

PRICE

14. Unless otherwise stated the purchase price is for delivery from the Supplier's warehouse, and includes the cost of basic packaging and includes any amount of GST payable under the GST Act.
15. The Supplier reserves the right to charge the Customer any costs, charges or expenses which the Supplier may incur on behalf of the Customer, including, but not limited to, transport delay (not caused by or contributed to by the Supplier) or any special requirements or stipulations of the Customer not provided for in any invoice.
16. No reasonable variation or additional charges, as provided in clause 15, will constitute a repudiation by the Customer of the invoiced amount.

CLAIMS

17. Acceptance of the return of any goods is in the Supplier's absolute discretion, and the Customer shall obtain prior approval from the Supplier before returning any purchased goods. Any goods not in its original condition or otherwise processed will not be returnable to the Supplier. The Supplier reserves the right to charge a re-stocking and handling fee on goods returned by the Customer.

18. The Customer accepts the responsibility on delivery of the goods for checking that the goods are those specified in the invoice.
19. No claim for faulty goods shall be made unless written notice thereof is received within seven (7) days of delivery of the goods, and before they are used, processed, sold or otherwise dealt with. The Supplier's liability to the Customer shall be limited to the replacement of the goods, or crediting the Customer's account with the cost of the goods.
20. The Supplier shall not be liable for any shortages in the supply of the goods, and the Customer shall only be entitled to reject any excess over the quantity of goods ordered.

JURISDICTION

21. The Customer acknowledges and agrees that these Terms are governed by the laws of Victoria and the laws of the Commonwealth of Australia in force in Victoria.
22. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
23. The parties to the agreement encompassed in these Terms submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant courts competent to hear appeals from those courts.

SECURITY/CHARGES

24. The Customer charges in favour of the Supplier all of its estate and interest in any real property which the Customer owns at present and in the future with the amount of its indebtedness in terms of any invoiced contract with the Supplier until such indebtedness is discharged.
25. The Customer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat which the Supplier may choose to lodge against real property that the Customer may own in any land titles office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations in terms of any contract with the Supplier.
26. Where the Customer has previously entered into a contract with the Supplier by which the Customer has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in any new and subsequent contracts with the Supplier. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect these Terms.

PURPOSE OF CREDIT

27. The Customer acknowledges and agrees that the credit to be provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial purposes.

FORMATION OF CONTRACT

28. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Customer's offer as set out in an invoice will complete a contract.
29. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these Terms.
30. Where the Customer provides a purchase order to the Supplier, any purchase order is to be submitted showing an order number and full description of the goods ordered. Any price, description or quantity given in any invoice shall be subject to revision if any variation is shown on the purchase order. The Supplier does not accept responsibility for any errors in type, quantity, specification or otherwise where orders for goods are made other than by a written purchase order or confirmed in the Supplier's invoice.
31. No variations or additions to any purchase order or these shall be of any effect unless expressly agreed to in writing by the Supplier.

RETENTION OF TITLE

32. While the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
33. Until payment in full has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
34. The Customer will be entitled to sell goods purchased from the Supplier in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Customer will sell

as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.

35. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 34 unless and until the funds held on trust are remitted to the Supplier.
36. The Customer agrees that while property and title in goods purchased from the Supplier remains with the Supplier, the Supplier has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
37. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clause 36. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.
38. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and, if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
39. The Supplier is entitled to a general lien on all goods belonging to the Customer, in the possession of the Supplier (even if such goods have been paid for), for all amounts owing to the Supplier by the Customer.
40. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009* (Cth) ("PPSA").

LIMITATION OF LIABILITY

41. If any goods are supplied by the Customer to the Supplier for further processing, and such goods are lost, damaged or destroyed, the Supplier's liability to the Customer shall be limited to replacement of such goods, or the amount of an insurance recovery in respect of such goods.

WARRANTIES

42. Subject to any conditions and warranties implied by law, and to any conditions and warranties contained in these Terms, all conditions, warranties and representations on the part of the Supplier, whether express or implied, are expressly negated and excluded. In particular, the Supplier makes no warranty as to the fitness for purpose of any goods sold to the Customer and the Customer must make its own enquiries in this regard.
43. The Supplier shall be under no liability to the Customer for any loss or damage to person or property, or for death or injury, caused by any act or omission (including negligence) of the Supplier, its servants or agents.
44. Any liability of the Supplier is limited to general damages only. The Supplier shall not be responsible for any special damages suffered by the Customer, including, but not limited to, consequential loss, loss of profits, or any unforeseeable damages howsoever arising.
45. Subject to qualifications contained in *Competition and Consumer Act 2010* (Cth), or any State or Territory Fair Trading Acts, should the Supplier be liable for breach of a condition or warranty implied by law, its liability for such breach shall be limited to one of the following, as determined by the Supplier, namely the replacement of the goods, or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods, or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
46. Subject to any legislation or express agreement to the contrary, the Customer acknowledges that he does not rely on the skill and judgement of the Supplier, its servants or agents, in determining whether the goods to be supplied are fit for any particular purpose. The Customer further acknowledges that any advice furnished by the Supplier, with respect to the use of the goods, is given on the basis that the Supplier assumes no obligation or liability for advice given or results obtained, all such advice being given and accepted by the Customer is at the Customer's risk. The Customer shall be responsible for ensuring that purchased goods are not used for any purpose for which they are not suitable.
47. No claim or action shall be maintainable against the Supplier, unless it has been notified in writing, detailing full particulars, setting out the basis of liability and quantum of any claim and providing all supporting documentary evidence.
48. Nothing in these Terms 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 any goods and/or services pursuant to the agreement contained in these Terms of all or any of the provisions of the *Competition and Consumer Act 2010* (Cth) or any State or Federal legislation which by law cannot be excluded, restricted or modified.

CUSTOMER'S OBLIGATIONS

49. It is the Customer's responsibility to ensure that all occupational health and safety regulations are observed and other appropriate steps taken in relation to the fitness for purpose, storage, handling and use of the goods. Where information is supplied to the Customer on potential hazards relating to the goods, the Customer must bring such information to the attention of its employees, agents, subcontractors, visitors and clientele. Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of purchased goods into storage.
50. The Customer shall not alter, remove or in anyway tamper with any of the trade or other marks, or numbers of the Supplier attached to or placed upon the goods.

CANCELLATION OF TERMS AND CREDIT

51. The Supplier reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of any contract with the Supplier or not.
52. Upon cancellation with or without notice, all liabilities incurred by the Customer become immediately due and payable to the Supplier.

INDEMNITY

53. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes all legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

PROVISION OF FURTHER INFORMATION

54. The Customer undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Customer's credit worthiness, including an updated credit application.
55. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders or constitution).

TRUSTEE CAPACITY

56. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
 - (a) The Customer enters into any contract with the Supplier both in its capacity as trustee and in its personal capacity;
 - (b) The Customer has the right to be indemnified out of trust assets;
 - (c) The Customer has the power under the trust deed to sign any contract with the Supplier; and
 - (d) The Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Supplier.
57. The Customer must give the Supplier a copy of the trust deed upon request.

PARTNERSHIP

58. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier.

INSOLVENCY

59. If the Customer becomes insolvent, the Customer remains liable under the agreement encompassed in these Terms for payment of all liabilities incurred hereunder. The Customer remains liable under the said agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

WAIVER

60. A waiver by the Supplier of a Customer breach of any provision of these Terms must be made by an authorised officer of the Supplier in writing.
61. Until ownership of purchased goods passes, the Customer waives the rights which it would otherwise have under the PPSA:
 - (a) Under section 95 to receive notice of intention to remove an accession;
 - (b) Under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - (c) Under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) Under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (e) Under section 130 to receive a notice to dispose of goods;
 - (f) Under section 132(2) to receive a statement of account following disposal of goods;
 - (g) Under section 132(4) to receive a statement of account if no disposal of goods for

each 6-month period;

- (h) Under section 135 to receive notice of any proposal of the Supplier to retain goods;
- (i) Under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
- (j) Under section 142 to redeem the goods;
- (k) Under section 143 to reinstate the security agreement; and
- (l) Under section 157(1) and 157(3) to receive a notice of any verification statement.

COSTS

- 62. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer.
- 63. The Customer must pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy against the Customer, including collection costs, debt recovery fees and legal costs on a full indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- 64. The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 37 and 63;
 - (b) Secondly, in payment of any interest incurred in accordance with clause 67; and
 - (c) Thirdly, in payment of all outstanding invoices.

TAXES AND DUTY

- 65. The Customer must pay GST on any taxable supply made by the Supplier to the Customer under any contract between the parties. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
- 66. If as a result of:
 - (a) Any legislation becoming applicable to the subject matter of these Terms; or
 - (b) Any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration, the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

INTEREST RATES

- 67. The interest rate on any outstanding debts is a fixed rate of 15 per cent per annum.

SET-OFF

- 68. All payments required to be made by the Customer under any contract entered into with the Supplier will be made free of any set-off, or counterclaim and without deduction or withholding.
- 69. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.

MISCELLANEOUS

- 70. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's reasonable control.
- 71. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.
- 72. The Customer will, at the request of the Supplier, execute all documents and do such further acts as may be required for the Supplier to register security interests granted by the Customer to the Supplier under the PPSA.
- 73. The Customer agrees to accept service of any document required to be served, including any notice under any contract with the Supplier or the PPSA, or any originating process, by prepaid post at any address nominated in the said contract or any other address later notified to the Supplier by the Customer or the Customer's authorised representative.
- 74. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, where the Supplier has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

SEVERANCE

- 75. If any provision in these Terms is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 76. If any part of these Terms is invalid or unenforceable, that part is deleted and the remainder remain effective.

VARIATION

- 77. The Customer agrees that these Terms may be varied, added to or amended by an authorised officer of the Supplier at any time by written notice to the Customer.
- 78. Any proposed variation to these Terms by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

CONSENT TO REGISTER

- 79. The Customer consents to the Supplier recording details of any contract with the Supplier on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
- 80. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

ENTIRE AGREEMENT

- 81. These Terms constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of any contract with the Supplier are merged in and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms or constitutes any collateral agreement, warranty or understanding.