

TERMS AND CONDITIONS OF SALE

1. Definitions

Buyer means a person whose Credit Application has been accepted by the Supplier, who has entered into a Supply Agreement with the Supplier and/or who has placed an order for Goods which has been accepted by the Supplier.

Confidential Information of the Supplier means information (in original, duplicate or derivative form) that is by its nature confidential to the Supplier, is designated by the Supplier as confidential or that the Buyer knows, or ought to know, is confidential to the Supplier, including (without limitation) these Terms, any Supply Agreement and any information which is owned or used by the Supplier (or any of its Related Companies) relating to its business, operations, affairs, customers, products, sales and pricing.

Credit Application means any application for a credit account to which these Terms are annexed as schedule 1.

Goods means the goods supplied to the Buyer under these Terms.

New Zealand Consumer Law means any one or both of the *Credit Contracts and Consumer Finance Act 2003* and the *Consumer Guarantees Act 1993*, each as amended or replaced.

Non Excludable Obligation means any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the New Zealand Consumer Law or any other statute, the exclusion, restriction or modification of which would either contravene that statute or cause any of these Terms to be void.

PPS Act means the *Personal Property Securities Act 1999* and any regulation made at any time under the PPS Act (each as amended).

Purchase Price means the amount, exclusive of Taxes, which the Buyer must pay to the Supplier for the Goods, being the Supplier's quoted price, subject to the application of any rebates, allowances or other discounts provided under any Supply Agreement.

Related Company has the meaning given to that term in section 2(3) of the *Companies Act 1993* (NZ) and extends to also include any company or corporate entity anywhere in the world which would have that meaning if it were a company as defined in section 2(1) of the *Companies Act 1993* (NZ).

Supplier means Hexion (N.Z.) Limited.

Supply Agreement means an agreement for the sale and purchase of any of the Goods (and where relevant, support services) between the Supplier and the Buyer to which these Terms are annexed.

Taxes means all forms of taxation, duties, dues, imposts, rates and levies of New Zealand or elsewhere.

Terms means the terms and conditions of sale of the Goods as set out in this document, read together with any Credit Application and includes any additional terms and conditions agreed in writing between the Supplier and the Buyer, including any Supply Agreement.

2. Interpretation

Terms used in these Terms which are defined in the PPS Act have the meaning given to them in the PPS Act.

3. Orders

Any order submitted by the Buyer must be accepted in writing by the Supplier before it will bind the Supplier. Each order accepted by the Supplier will be deemed to incorporate, and the Buyer will be bound by, these Terms.

If there is any inconsistency between the following documents, that inconsistency will be resolved using the following order of precedence: any Supply Agreement, these Terms and any order.

4. Payment

The Buyer must pay the Purchase Price for the Goods and reimburse the Supplier for any reasonable packaging, transport and insurance costs in relation to the delivery of the Goods incurred by the Supplier (**Costs**), within 30 days from the end of the month in which the Goods were delivered (**Payment Period**).

The Supplier must deliver a tax invoice in respect of the Purchase Price and any Costs to the Buyer by the end of the month in which the Goods were delivered to the Buyer.

A party must make payment due under these Terms and any applicable Supply Agreement in the currency specified in the relevant invoice or as otherwise agreed by the parties by electronic transfer of cleared funds to a bank account specified by the Supplier.

Without limiting any other rights the Supplier has, the Buyer will pay interest on any sum not paid within the Payment Period (**Overdue Amount**) at the rate of 10% per annum calculated from expiry of the Payment Period to date of final payment. The Supplier may appropriate any payment made by the Buyer on any other account in payment of the Overdue Amount and the Supplier is entitled to apply any payments by the Buyer towards any Goods supplied to the Buyer. The Buyer's account will be placed on hold if payment is not made within the Payment Period.

Overdue accounts will be forwarded to a debt collection agency and all costs relating thereto or which are otherwise incurred in recovering the Overdue Amount must be paid by the Buyer immediately on receipt of an invoice from the Supplier for those costs.

5. Cancellation of or changes to orders

No orders may be changed, cancelled or deferred by the Buyer without the Supplier's written consent. All costs, losses, charges and expenses incurred by the Supplier as a result of the variation, cancellation or deferral of an order will be paid by the Buyer immediately on receipt of an invoice from the Supplier setting out those costs.

6. Delivery

Any date for delivery of the Goods notified by the Supplier to the Buyer is an estimate only and the Supplier will not be liable to any party for any loss or damage of any kind resulting from a failure to meet that estimated delivery date.

The Supplier will be deemed to have effected delivery of the Goods for all purposes under these Terms once they are delivered to, or if delivery is attempted at, the delivery address advised by the Buyer, or when they are delivered at the Supplier's premises to a carrier engaged by the Buyer.

In the event that Goods cannot be delivered due to circumstances beyond the Supplier's reasonable control, delivery will be deemed to have been effected at the time the Goods left the Supplier's premises. The Buyer will reimburse the Supplier for all storage costs for the Goods incurred by the Supplier after the Goods are deemed to have been delivered to the Buyer, immediately on receipt of an invoice from the Supplier for those costs.

7. Possession and Title

Title in the Goods will not pass to the Buyer until the Purchase Price and all other money owing by the Buyer to the Supplier on any account whatsoever has been paid in full. Until title to the Goods has passed to the Buyer, the Buyer holds the Goods as fiduciary bailee of the Supplier. If payment is not made within the Payment Period, the Supplier may at its discretion retake possession of the Goods, and the Buyer hereby grants to the Supplier a licence for access to the Buyer's premises for the purpose of that recovery.

On retaking possession of the Goods the Supplier will be entitled to retain or sell the Goods in the ordinary course of carrying on its business.

The Buyer acknowledges that on delivery, the following risks pass to the Buyer:

- (i) loss or damage to the Goods; and
- (ii) liability arising from the handling, processing, blending, storage, transportation and disposal of the Goods.

8. Acknowledgement

The Buyer acknowledges and agrees that it:

- (i) has the appropriate expertise in the handling, processing, storage, transportation and sale of products into which the Goods will be incorporated;
- (ii) has received the Supplier's material safety data sheets for the Goods (if provided by the Supplier) and acknowledges that it has had the opportunity to obtain from the Supplier such further information as the Buyer considers necessary for it to establish and implement appropriate health, safety and environmental procedures in relation with the handling, processing, blending, storage, and transportation of the Goods (including as incorporated with the Buyer's products);
- (iii) has become familiar with the characteristics, quality, hazards and precautions necessary for the safe handling and use of the Goods and will take all steps necessary to inform, warn and familiarise its employees, agents, customers and contractors who may handle the Goods of all hazards pertaining to and proper procedures for safe use and disposal of the Goods, and the containers or equipment in which the Goods may be handled, shipped or stored; and
- (iv) it will label as appropriate any materials which it makes or resells which include the Goods.

The Buyer must comply with all laws, regulations and standards applicable to the possession, handling, transportation, processing and use of the Goods.

9. Default

Without limiting any other remedy of the Supplier under these Terms or under law, if the Buyer is in default of any of its obligations under these Terms (including under any Supply Agreement), the Supplier may defer further deliveries of Goods until the default is remedied by the Buyer to the reasonable satisfaction of the Supplier.

10. Exclusion

Except in relation to Non Excludable Obligations and to the maximum extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from these Terms.

11. Limitation of liability

All provisions of these Terms are subject to, and do not operate to exclude, restrict or modify the application of any Non Excludable Obligations.

It is agreed and acknowledged by the Buyer that where the Goods supplied under these Terms are for the purposes of a business, New Zealand Consumer Law will not apply. Except in relation to Non Excludable Obligations, to the maximum extent permitted by law, the Supplier will have no liability to the Buyer for any loss, harm, damage, cost or expense (including legal fees) arising directly or indirectly under or in connection with the supply of the Goods or in relation to any Goods supplied, and whether arising under any

indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.

12. Returns and Claims

If any part of the Goods received by the Buyer is considered to be defective or damaged, the Buyer must notify the Supplier of the alleged defect or damage in writing within seven (7) days of the date of delivery, and the Buyer acknowledges that failure to do so will constitute an acceptance by the Buyer of the Goods as being the correct quantity, of merchantable quality and free of defects. The Supplier may at its discretion repair or replace damaged or defective Goods.

13. Use

The Supplier supplies the Goods to the Buyer under these Terms on the condition the Buyer will not supply the Goods to any third party (other than a Related Company of the Buyer) without the prior written consent of the Supplier. The Supplier may withhold its consent in its absolute discretion and, if it is willing to grant its consent, may grant its consent with or without conditions.

14. Indemnity

To the extent permitted by law, the Buyer agrees to indemnify, defend and hold the Supplier harmless from and against all claims, liabilities, legal fees, costs and expenses (including those relating to injury to or death of the Buyer's employees) arising from or in connection with the possession, handling, transportation, processing and use of the Goods after risk in the Goods passes to the Buyer (including as a result of the Buyer's breach of any of its obligations under these Terms), except those resulting solely from Goods which did not conform to the contracted specifications in all material respects, which non conformity was not known to the Buyer and was not reasonably discoverable by the Buyer. The Supplier may participate, at its own cost and expense, in the defence of any such claim for the further protection of its own interests.

15. Termination

The Supplier may terminate these Terms or suspend any further supply of Goods with immediate effect if the Buyer breaches any of these Terms; ceases to carry on a business; is unable to pay its debts as and when they become due and payable; enters into any arrangement with its creditors; or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to the Buyer's assets, operations or business.

On termination of these Terms or suspension of the supply of Goods, if any Goods have been delivered but not paid for, the Purchase Price will become immediately due and payable; the Supplier has the right to recover and retain or resell any Goods in which title remains with the Supplier and the Buyer grants to the Supplier a licence for access to the Buyer's premises for the purpose of that recovery.

Termination of these Terms or suspension of the supply of Goods does not affect any accrued rights or remedies of the Supplier.

16. Privacy

The parties agree to be comply with all applicable New Zealand privacy legislation. The Buyer authorizes the Supplier to collect, hold and use personal information of the Buyer or any of the Buyer's directors, officers, principals, guarantors, employees or agents for the purposes of maintaining its customer records and to use and disclose such personal information to any third party for the purposes of obtaining and/or maintaining a commercial and/or consumer credit report and for registering and amending financing statements under the PPS Act.

Where the Buyer is a natural person, the authorities under this clause are authorities or consents for the purposes of the *Privacy Act 2020*. The Buyer can access and request correction of any of the personal information the Supplier holds in respect of the Buyer by making a request to the Supplier in writing.

17. PPS Act

These Terms constitute a security agreement and the Buyer grants to the Supplier a security interest in all Goods and their proceeds as security for the payment of all indebtedness owed whatsoever to the Supplier (including without limitation payment of the Purchase Price in respect of all Goods) and for the Buyer's performance of its other obligations under these Terms. The Buyer agrees, at the Supplier's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that the Supplier has a perfected first ranking security interest in all Goods (and the proceeds of those Goods) supplied by the Supplier; and that the Supplier may register a financing statement or financing change statement on the Personal Property Securities Register against the Buyer at the Buyer's cost and do anything else required to perfect its security interest granted under these Terms.

To the extent permitted by law, the Buyer waives its right to receive notice from the Supplier of any verification statement under section 148 of the PPS Act.

The Buyer agrees it has no rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPS Act.

To the extent permitted by law, the Buyer will indemnify the Supplier on demand for all costs and expenses incurred in connection with registering or maintaining a financing statement or financing change statement relating to the security interest created by these Terms.

The Supplier reserves all rights and powers it may have in addition to those conferred under the PPS Act.

The Buyer must not create, or permit to be created, any security interest in the Goods (other than that created under these Terms) including any replacement part or other item that is incorporated into or attached to any Goods, and must not

change its name without notifying the Supplier at least 10 business days prior to doing so.

18. Guarantee and indemnity

In consideration for the Supplier granting credit to the Buyer on these Terms, the directors (if the Buyer is a company) or the partners (if the Buyer is a partnership) or the trustees (if the Buyer is a trust) (**Guarantors**) jointly and severally, unconditionally and irrevocably guarantee the due and punctual performance by the Buyer of all its obligations under these Terms and indemnify and keep the Supplier indemnified against all loss and damage, including consequential loss, incurred by it as a result of any breach by the Buyer of these Terms. The Guarantors' obligations under this clause 18 remain unaffected despite an amendment of these Terms, whether with or without the Guarantors' knowledge or consent; any rule of law or equity to the contrary; a change in the constitution, membership, or partnership of any person; the partial performance by the Buyer of its obligations under these Terms or those obligations not being enforceable against the Buyer; the Buyer granting any time or other indulgence to, compounding or compromising with, or wholly or partially releasing the Buyer or a Guarantor from an obligation; or another thing happening that might otherwise release, discharge or affect the obligations of the Guarantors under this clause 18. This clause 18 is a principal obligation and is not to be treated as ancillary or collateral to another right or obligation and is independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which the Supplier or another person may hold concerning the Buyer's obligations under these Terms.

19. GST

In this clause 19, a word or expression defined in the *Goods and Services Tax Act 1985* has the meaning given to it in that Act. Unless otherwise stated, the Purchase Price and any other amounts payable by the Buyer under these Terms is exclusive of GST and any other Taxes, which must be paid by the Buyer.

If a party makes a supply under or in connection with these Terms in respect of which GST is payable, the consideration for the supply but for the application of this clause 19 is increased by the amount of GST payable in respect of that supply.

20. Force Majeure

No party is liable for any failure to perform or delay in performing its obligations under these Terms if that failure or delay is due to anything beyond that party's reasonable control, including (but not limited to) fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, cyber attack, epidemic, pandemic, industrial dispute affecting raw material, fuel or energy suppliers, shortage of or inability to obtain fuel, power, raw materials, equipment, transportation or the Goods themselves, without legal action and at usual prices or from usual sources, strike or labour controversy (provided neither

party is required to settle any labour matter against its own best judgement) or enactments of any government agencies (**Force Majeure Event**).

If a Force Majeure Event affecting a party precludes that party (**Precluded Party**) partially or wholly from complying with its obligations (except its payment obligations) under these Terms, then as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of the Force Majeure Event, the obligations the Precluded Party is precluded from performing and the expected duration of the delay arising directly out of the Force Majeure Event. The Precluded Party's obligations to perform the obligations it is precluded from performing will be suspended for the duration of the actual delay arising directly out of the Force Majeure Event and the other party's obligations to perform any obligations dependent on those affected obligations will be suspended until the Precluded Party resumes performance. This clause 20 does not apply to any obligation to pay money.

21. Intellectual Property

All patents, trademarks, copyrights and any other intellectual property in the Goods remain the sole property of the Supplier at all times and the Buyer agrees that it will not infringe any of the Supplier's intellectual property rights.

All drawings and technical specifications supplied or made available to the Buyer by the Supplier are subject to copyright and strictly confidential. The Buyer must not communicate any details of any drawings or technical specifications to any third party without the Supplier's prior written consent or make any copies of or use the drawings or technical specifications for any purpose other than as expressly authorised in writing by the Supplier.

22. Confidential Information

Without limiting clause 21, the Buyer must keep confidential and secure all Confidential Information of the Supplier, except for disclosure to officers or employees of the Buyer (who have a need to know for the purposes of these Terms and have agreed to keep confidential all Confidential Information) or to the extent the Buyer is required by law to disclose any Confidential Information. The Buyer must immediately return any Confidential Information on the termination of these Terms or any Supply Agreement, or at the request of the Supplier.

23. General

These Terms (including any Supply Agreement) constitute the entire agreement between the Supplier and the Buyer in relation to the Goods. The Buyer acknowledges that it has not relied on any representation by the Supplier, its agents, or any other person in entering into these Terms. These Terms cannot be amended or varied except in writing signed by the Supplier and the Buyer. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or

remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

A waiver of a right, power or remedy will only be effective if it is in writing and signed by the party granting the waiver. A term or part of a term of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining terms will continue in force. The Buyer may not assign these Terms, or any rights under these Terms, without the prior written consent of the Supplier. The Buyer must deal with the Supplier directly in relation to the supply of Goods under these Terms and may not delegate or sub contract or deal in any way with any of its rights or obligations under these Terms, including but not limited to by appointment of an agent or otherwise, without the prior written consent of the Supplier, which the Supplier may withhold in its absolute discretion.

The Supplier may sub contract any of its obligations under these Terms to a third party without the Buyer's consent, provided that such sub contracting will not relieve the Supplier from liability for the performance of any of its obligations under these Terms.

The Buyer agrees that the Supplier enters into these Terms on its own behalf and also as agent and trustee for each Related Company of the Supplier and each Related Company of the Supplier may enforce these Terms as if it were a party to these Terms.

These Terms are governed by the laws of New Zealand and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.