



VICTORIAN CHEMICAL CO. PTY. LTD.

ABN 36 004 188 863

83 Maffra St, Coolaroo, Victoria, 3048, Australia

Tel: (61-3) 9301 7000 Fax: (61-3) 9309 7966

Email: products@vicchem.com

Vicchem Terms and Conditions

1. These Terms and Conditions apply and are incorporated to each contract for the supply of goods (hereinafter "goods") and/or services (hereinafter "services") from Victorian Chemical Company Proprietary Limited A.B.N. 36 004 188 863 ("Vicchem") to any customer ("Customer").

2. A contract for the supply and purchase of goods and/or services will be formed on these Terms and Conditions immediately when a Customer requests the supply of goods and/or services (whether verbally, in writing or through any other means of communication) and Vicchem: (i) agrees to supply the goods and/or services (whether verbally, in writing or through any other means of communication) or (ii) provides the goods and/or services to the Customer.

3. Payment must be made at the time of the goods and/or services being provided to the Customer, unless the Customer has entered into:- (a) Vicchem's Account Application (also known as "credit application"); and/or (b) , Vicchem's consignment agreement ("consignment agreement") - in which case payment is to be made in accordance with the credit application or consignment agreement, as the case might be. If the Customer fails to pay Vicchem in full on or before the due date for payment, Vicchem may: (a) charge interest at a rate of 3% per annum plus the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 (Vic) on overdue amounts; and (b) suspend any further deliveries of goods and/or provision of services to the Customer or terminate any contract in relation to undelivered goods or services to be provided. The Customer must pay to Vicchem any costs, expenses or losses incurred by Vicchem as a result of the Customer's failure to pay all amounts due to Vicchem by the due date including, without limitation, any debt collection and legal costs incurred on a solicitor/client (full indemnity) basis. The Purchaser shall not be entitled to make any deduction from the price of the goods and/or services in respect of any set-off or counter claim.

4. Where the Customer changes their mind concerning a purchase, goods supplied to a Customer shall not be accepted for return and credit or exchange by Vicchem without the prior approval of Vicchem, which approval shall be at Vicchem' sole discretion and subject to conditions as Vicchem solely considers appropriate.

5. Subject to any law to the contrary, until the Customer has paid all sums outstanding in relation to any goods:- (a) Vicchem will retain legal and beneficial title in and full ownership of the goods; (b) if the goods are in the Customer's possession, the Customer must store the goods so that they are clearly identifiable as the property of Vicchem; (c) Vicchem may call for and recover possession of the goods (for which purposes Vicchem's employees or agents may enter the Customer's premises and take possession of the goods without liability to the Customer)

and the Customer must deliver the goods to Vicchem if requested to do so by Vicchem at the sole expense of the Customer; (d) the Customer may, in the ordinary course of the Customer's business, sell the goods to a third party, provided that the Customer holds the proceeds of sale on trust for Vicchem, and accounts to Vicchem for those sums if requested to do so by Vicchem; (e) appropriate records shall be kept by the Customer of any goods owned by Vicchem. Without limiting the foregoing, for the avoidance of doubt, until goods are paid for in full, the relationship between Vicchem and the Customer shall be fiduciary and the Customer shall hold the goods as bailee for Vicchem.

6. Until the Customer has paid all sums owing or outstanding in relation to the goods, the supply of goods to the Customer by Vicchem under this Agreement gives rise to a Purchase Money Security Interest ("PMSI") in the goods in favour of Vicchem, and Vicchem may register a Financing Statement in respect of its PMSI pursuant to this clause on the Personal Property Securities Register. Vicchem is not obliged to give, and is excluded from giving, any notice or providing any documents under the Personal Property Securities Act 2009 (Cth)(as amended)) ("PPSA")(including notice of a financial or verification statement unless the notice is required by the PPSA and cannot be excluded). (Terms used in this clause have the meaning given to them in the PPSA.)

7. The risk in any goods supplied to, or sold to a Customer passes to the Customer:- (a) if Vicchem delivers the goods to the Customer's premises - at the time of delivery; or (b) otherwise, at the time the goods are collected by or on behalf of the Customer.

8. Vicchem will make all reasonable efforts to have goods delivered and/or services provided to the Customer on the date(s) agreed between the parties, however if for any reason delivery is not made or the services are not provided on the agreed dates, then, subject to any law to the contrary:- (a) Vicchem will not be liable to the Customer; and (b) the Customer will not be entitled to cancel any contract as a consequence of Vicchem's failure to deliver the goods and/or services on the agreed date(s). Time for completion, delivery, dispatch, shipment or arrival of the goods or for the tender of any documents is not of the essence. In the event of production of the goods or any part thereof being hindered or impaired or ceasing for any cause whatsoever outside the reasonable control of the Vicchem, Vicchem may notify the Customer that it is unable to fulfil the applicable contract and may cancel the contract without being under any liability whatsoever. Vicchem may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be separate contract and these Terms and Conditions shall apply to each partial delivery or delivery by instalments. Vicchem may deliver up to five (5%) percent more or less of the amount specified for delivery, subject only to an appropriate adjustment to the price payable, in full satisfaction of Vicchem's obligations pursuant to the particular contract.



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9. The Customer must notify Vicchem within seven (7) days of delivery of any short fall or damage or defects to goods delivered. To the extent permissible by the law, failure to so notify shall disentitle the Purchaser to any remedy in respect to the shortage or damage or defects.

10. In the purchase of any goods and/or services from Vicchem, as permitted by law, the Customer acknowledges it does not rely upon any statement, representation, warranty, condition, advice, recommendation, information, assistance or service provided or given by Vicchem or anyone on its behalf in respect of the goods and/or services supplied by Vicchem to the Customer (other any applicable Express Warranty), and the Customer relies upon its own expertise as to the condition, quality, application, suitability or fitness for their ordinary or any special use or purpose of the goods and/or services the subject of any contract entered into with Vicchem. It is the Customer's responsibility to ensure that goods supplied by Vicchem are the correct goods for the Customer's application.

11. As permitted by law, Vicchem shall not be liable in any circumstances for any technical advice or assistance given or rendered by it to the Customer whether or not in connection with the manufacture or supply of the goods and/or services.

12. The parties acknowledge that some goods and/or services are provided by Vicchem in accordance with information supplied by the Customer ("Customer Information"). Vicchem will not be responsible for any defects in the goods and/or any services provided by Vicchem which are the result (in whole or in part) of defects, omissions or errors in the Customer Information.

13. Vicchem acknowledges that there are certain laws which imply terms, conditions, warranties and guarantees into agreements for provision of goods and/or services ("Prescribed Terms") including under the Australian Consumer Law ("ACL") and which laws prohibit exclusion, restriction or modification of such Prescribed Terms or the limitation of the liability of the supplier of the goods and/or services for a breach thereof. Except for the Prescribed Terms, save for any Express Warranty that is given by Vicchem, Vicchem excludes all other conditions and warranties implied by custom, the general law or statute. However, to the extent permissible by law, if a Claim is made under the Prescribed Terms and/or any Express Warranty, where the goods and/or services are not those of a kind ordinarily acquired for personal, domestic, or household use or consumption as defined in the ACL ("Non-PDH") the liability of Vicchem for any Claim or for a breach of the Prescribed Terms (other than a breach of sections 51, 52 or 53 of the ACL) and/or breach of Express Warranty will be limited, at the option of Vicchem, to the following Agreed Remedies: (a) in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; (iv) the payment of the cost of having the goods repaired. (b) in the case of services: (i) the supplying of the services again; or (ii) the

payment of the cost of having the services supplied again. If the goods or services are Non PDH goods or services, the purchase price for which is more than \$40,000 (or such other amount specified in or prescribed under section 3 of the ACL) or the ACL does not apply to the purchase of the goods or services, then to the extent permissible by law (and save for any Express Warranty) all other warranties or guarantees (whether express or implied) are excluded. To the extent permissible by the law, without limiting the foregoing, Vicchem:- (a) shall be under no liability for any defect or defects (including any defect caused by the loading of goods) in, or deterioration or failure of, the goods or any part thereof (or any goods supplied with the goods or any part thereof) whether due to design, workmanship or materials or to any cause whatsoever unless the same is due to the negligence or wilful default of Vicchem or its employees or agents; and (b) shall be under no liability whatsoever for any failure of the goods to correspond with any description relating to the quantity, dimensions, weight, place of shipment or other statements relating to transport of the goods (other than in relation to a substantial ingredient of the identity of the goods).

14. To the extent permissible by law, Vicchem shall not be responsible for any defects in goods or any Claim(s) made by a Customer where: (a) such defect is caused or in any way contributed to by the Customer's failure to comply with these Terms and Conditions; (b) the goods have not been used in accordance with these Terms and Conditions and/or Vicchem's instructions or directions for use and/or storage (as provided from time to time) and/or in accordance with any special instructions provided by Vicchem; and/or (c) there are unpaid monies owing to Vicchem by the Customer in connection with the applicable goods and/or services.

15. To the extent permissible by the law, and subject to these Terms and Conditions, in no circumstances will Vicchem be liable to the Customer or others for any indirect, incidental, special and/or consequential losses, liability, costs or damages; any loss of income, loss of business opportunity, loss of revenue, loss of profits, any labour costs, injury or damage or death to persons or property.

16. To the extent permissible by law, Vicchem shall not be liable for and the Customer shall indemnify and keep Vicchem indemnified against any Claim, including but not limited to for loss, damage, injury or death to any person or property directly or indirectly occasioned by or arising from the use or operation or possession of the goods or any part of the goods or from the negligence, recklessness or wilful default (including the use of any part of the goods or any other goods supplied by Vicchem otherwise than in accordance with the Vicchem's instructions or directions for use and/or storage (as provided from time to time) and/or in accordance with any special instructions provided by Vicchem) or misuse by or on the part of the Customer or any other person other than Vicchem's personnel and this indemnity shall extend to any costs and expenses incurred by Vicchem.

17. Nothing in these Terms and Conditions limits, excludes or modifies or purports to limit, exclude or modify the rights



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provided under the ACL (as amended), or similar consumer protection law, where it would be illegal to do so.

18. If warranty service is required the Customer must notify Vicchem immediately. Any and all warranty claims relating to goods and/or services made must be made to the Vicchem ACL Customer Service Manager on 03 9301 7000 or via email at enquiries@vicchem.com and the Customer must explain the basis of its claim. Any goods the Customer believes are defective must be returned to Vicchem at the Customer's expense. The Customer must to Vicchem's satisfaction provide proof of purchase to be able to make a warranty claim. Any cost or expense associated with bringing a claim under this clause will be borne by the party who incurs the cost or expense. The warranty is given by Victorian Chemical Company Proprietary Limited A.B.N. 36 004 188 863; phone 03 9301 7000

19. The ACL requires Vicchem to disclose the following:- "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

20. The Customer warrants to Vicchem that any labels, designs, copyright, formula(s), materials, industrial and/or intellectual property provided by the Customer to Vicchem for Vicchem to use in the manufacture and/or packaging of the goods and/or provision of any services does not infringe the intellectual property rights of any other person and the Customer has and shall at all times have all rights (including intellectual property rights), licences and governmental body approvals, permits or authorisations and the necessary skill and experience to perform its obligations under these Terms and Conditions and to lawfully and safely sell and/or make use of the goods and/or modify, adapt and/or further manufacture using the goods or a portion thereof.

21. The Customer shall sell the goods subject to Vicchem's warranties and guarantees and specifications and directions of use as are specified by Vicchem from time to time.

22. The Customer shall ensure that it and its servants agents and employees are adequately trained to be able to properly sell the goods.

23. An amount payable by the Customer, in respect of the supply by Vicchem which is taxable supply under the GST Law, unless specifically expressed to the contrary, represents the GST exclusive value of the supply and the Customer as the recipient of the supply must, in addition to the sums specified in the applicable order or agreement as payable, pay to Vicchem the GST payable in respect of the supply. In this clause, the following words have the following meaning:- (a) "GST" means a good and service tax including under the GST Law; (b) "GST Law" includes any law introducing, related to or in furtherance of, a GST - including under A New Tax System (Goods and Services Tax) Act

1999 (as amended). In the event that Vicchem is obliged to make payment of all or any tariff(s), excise(s), or customs duty(s) or other tax(s) on their supply of goods to the Customer (the "Charges"), then the Customer must also, in addition to the sums specified in the applicable order or agreement as payable, pay to Vicchem an amount equivalent to the applicable Charges.

24. The Customer shall at all times indemnify and hold harmless Vicchem and its officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses on a solicitor/client basis) or liability reasonably incurred or suffered by any of those indemnified arising from any Claim against those indemnified where such loss or liability was caused by:- (a) a breach by the Customer of any of the obligations it owes to Vicchem (including but not limited to under these Terms and Conditions); or (b) any wilful, unlawful or negligent act or omission of the Customer or its employees, servants or agents.

25. The Customer hereby acknowledges and recognises Vicchem's exclusive ownership of the trade marks in the goods (if any), any insignia, logos, designs, manual(s) and any know how, expertise, technical, marketing or other information supplied by Vicchem to the Customer and all industrial and/or intellectual property whatsoever associated with the goods and/or any services provided by Vicchem to the Customer (the "Industrial Property") - which Industrial Property shall at all times remain the property of the Vicchem. The Customer shall not use Vicchem's Industrial Property other than is required in the sale of goods in the ordinary course of its business - and otherwise only as is permitted under these Terms and Conditions and as is directed by Vicchem from time to time. The Customer shall not otherwise in any way use Vicchem's Industrial Property without Vicchem's consent and the Customer shall not be a party (directly or indirectly) to the doing of any act, matter, omission or thing whereby Vicchem's Industrial Property may be endangered, jeopardised or prejudicially affected in any manner whatsoever.

26. Vicchem will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond Vicchem's reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of Vicchem's suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery or import or export regulations or embargoes.

27. Unless expressly agreed otherwise in writing between Vicchem and the Customer, the payment of any taxes and the obtaining and maintenance in full force and effect of any necessary export or import licences, regulatory authorisations or consent in respect of the goods is the sole responsibility of the Purchaser and Vicchem shall be under no liability whatsoever in respect of goods exported or imported without any necessary licenses, authorisations or consent.



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28. It is the Customer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage,

handling and the use of the goods and, where information is supplied to the Customer on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, contractors, visitors and customers. Without limiting the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of goods into storage and to comply with all and any directions given by Vicchem concerning storage of goods.

29. The Customer may not without the prior written consent of Vicchem assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with any contract between it and Vicchem to any other person or corporation whatsoever. Vicchem may at any time assign or transfer any of its rights or obligations under or in connection with any contract between it and the Customer to any other person or corporation whatsoever without obtaining the Customer's consent (including to Related Entity of Vicchem). Vicchem also reserves the right to sub-contract the performance of any contract or part thereof to any other party or person or corporation as it may determine. Unless expressly stated otherwise, the Customer acknowledges and agrees that these Terms and Conditions also apply to each contract for the supply of goods and/or services from any Related Entity of Vicchem to the Customer (such that in those circumstances the word "Vicchem" is to be substituted with the name of the applicable Related Entity of Vicchem).

30. In these Terms and Conditions:- (a) "Claim(s)" means all and any claims, actions, disputes, demands, proceedings, interest, costs, loss, expenses, damages, and debts and liabilities of any kind (including prospective or contingent) of whatever nature and however arising (whether wilfully or otherwise and whether for fundamental or non-fundamental breach of contract, in tort (including negligence) or for breach of any statutory provision) (b) "Express Warranty" means an express warranty given by Vicchem (c) "Related Entity" has the meaning given under the Corporations Act 2001 (Cth) (as amended).

31. Vicchem has the right to from time to time make updates and amendments to these Terms and Conditions and such updates and amendments shall take effect and be binding from the date of written notice being given to the Customer of the same - such notice to include by way of email to the Customer or publication of the updated and amended Terms and Conditions on Vicchem's website (the "Updated T&C Notification"). By ordering or purchasing goods and/or services or otherwise trading with Vicchem after the Updated T&C Notification the Customer agrees to be bound by the updated and amended Terms and Conditions in relation to any orders or purchases of goods and/or services or trading with Vicchem after the Updated T&C Notification.

32. The Agreement formed under these Terms and Conditions and all contracts made between Vicchem and the Customer are made in the State of Victoria and the parties

agree to submit all disputes arising between them to the courts of Victoria. These Terms and Conditions may only be varied with the written consent of a current director of Vicchem. If any term or part of a term of these Terms and Conditions is illegal or unenforceable it may be severed from these Terms and Conditions and the remaining terms or parts will continue in force. This document contains and represents the entire agreement between Vicchem and the Customer (and supercedes and excludes all prior and other discussions and representations and arrangements relating to the goods and/or services), save to the extent of the terms contained in any credit application and/or consignment agreement (if any) made by the Customer and Vicchem, the terms of which shall be deemed to be incorporated into these Terms and Conditions and to the extent that there is any inconsistency between these Terms and Conditions and the credit application and/or consignment agreement, the terms and conditions of the credit application and/or consignment agreement shall prevail.