

## **NowChem's Trading Terms ("Terms")**

### **Application of these Terms**

These Terms shall apply to the supply by NowChem and the purchase by the Customer of any and all products ordered by the Customer from NowChem.

### **Establishment of Credit Account**

A Customer may apply for a credit account from NowChem that will determine the Payment Terms and credit limit in relation to the supply of products by NowChem (a "**Credit Account**").

To apply for a Credit Account, the Customer must complete and submit to NowChem the Credit Account Application Form attached to these Terms.

Information provided in a Credit Account Application Form will be reviewed and assessed by NowChem and a Credit Account will be granted to the Customer based on that information and at the discretion of NowChem.

The Customer warrants and represents that the information provided in a Credit Account Application Form and any information supplied in support thereof, is accurate, up to date and complete, and does not mislead NowChem as to the financial standing of the Customer. The Customer will promptly inform NowChem of any significant changes to the information provided in a Credit Account Application Form and any information supplied in support thereof that may affect the financial standing of the Customer.

NowChem reserves the right to vary the Payment Terms and credit limit under a Credit Account, from time to time, provided that it shall notify the Customer of any such changes and any orders for products placed before such notification shall have the Payment Terms and credit limit that were in place immediately before the variation. All subsequent orders shall be on the varied Payment Terms and credit limit.

### **Payment**

Notwithstanding that a Customer may have a Credit Account, payment of the first invoice for products ordered by the Customer shall be made on or before delivery of the products in that order.

For all subsequent orders under a Credit Account, the Customer must pay any invoice in full on or before 30 days from the end of the month in which the invoice is dated ("**Default Credit Account Payment Terms**") or within the period stipulated in the Credit Account ("**Credit Account Payment Terms**"), if different to the Default Credit Account Payment Terms. A reference to "**Payment Terms**" in these Terms is a reference to either the Default Credit Account Payment Terms or the Credit Account Payment Terms, as applicable.

Where payment is not made in accordance with the Payment Terms, NowChem reserves the right to:

- withhold the manufacture, supply and delivery of any products in an order to which the invoice relates;
- withhold the manufacture, supply and delivery of products on any previous or subsequent order(s); and
- reclaim products delivered to the Customer under an unpaid or partially paid invoice, until such time as the outstanding and overdue amount is paid in full.

In the event that the Customer does not comply with the Payment Terms under a Credit Account, NowChem reserves the right to cancel a Credit Account at its sole and absolute discretion or vary the Payment Terms and/or credit limit of the Credit Account.

Customers who do not have a Credit Account with NowChem may place orders for products, provided that, payment of the invoice for products ordered shall be made on or before delivery of the products in that order.

### **GST**

GST at the current prevailing rate shall be added to the supply of all goods and services provided by NowChem under an invoice. Failure to pay the GST on an invoice will mean that it has not been paid in full.

All invoices shall be in Australian dollars and are to be paid in Australian Dollars.

### **Risk and Title**

#### ***Title, Retention of Title and the Personal Properties Securities Act 2009 (Cth) (the “PPSA”)***

Title (ownership) to the products supplied by NowChem to the Customer under these Terms shall not pass to the Customer and be retained by NowChem (“**ROT**”), until such time as payment in full is received by NowChem.

The Customer shall not supply, sell, dispose of, convert, combine or mix with other goods, or otherwise deal in the products until such time as title to them vests in the Customer.

The Customer agrees to the registration of these Terms and the ROT hereunder, as a security interest by NowChem as a secured party on the Personal Properties Security Register (the “**PPSR**”) as a Purchase Money Security Interest (a “**PMSI**”) as defined under the PPSA as amended from time to time.

To the extent permitted by law, the operation of section 46 of the PPSA is excluded.

To the extent permitted by law, NowChem as a secured party under the PPSA, and for the purposes of section 115(1) and 115(7) of the PPSA, need not comply with sections 95, 121(4), 125, 130, 132(3) or 132(4) of the PPSA and sections 142 and 143 of the PPSA are excluded.

To the extent permitted by law, NowChem as a secured party under the PPSA, for the purposes of section 115(7) of the PPSA, need not comply with sections 132 and 137(3) of the PPSA.

### ***Risk***

Risk in the products delivered to the Customer shall pass to the Customer upon the products being collected by or on behalf of the Customer from NowChem’s premises and the Customer shall be responsible for the cost and arrangement of any transit insurance.

Risk in the products delivered by NowChem shall pass to the Customer upon the unloading of the products to the premises nominated by the Customer and NowChem shall be responsible for the cost and arrangement of any transit insurance.

## **Forecasts**

NowChem may request that the Customer provide forecasts of the Customer's requirements for volumes of products to be supplied by NowChem so that NowChem can purchase the necessary volumes of raw materials, packaging and other components to fulfil orders of those products on a timely basis.

NowChem shall order such specific raw materials, packaging and other components to meet the forecasted volumes, provided that, if the Customer has not ordered products to the forecasted volumes within the stipulated time period, NowChem shall be entitled to invoice the Customer for the cost of the remaining unused raw materials, packaging and other components at the end of the stipulated period.

## **Delivery**

Delivery of products will vary from time to time based on a number of factors including whether delivery is to be made by NowChem or a third party courier, the delivery destination, preferred delivery date and characteristics of the products including whether the special requirements are required to transport the products. Current delivery terms and conditions can be found at <https://shop.nowchem.com.au/delivery/> (the "**Delivery Terms**").

NowChem shall use its reasonable endeavors to deliver products in accordance with the Delivery Terms, as amended from time to time.

NowChem reserves the right to change the Delivery Terms without notice, provided that NowChem shall use its best endeavors to deliver products in accordance with the Delivery Terms that were current as at the date of the invoice for the products.

## **Return of Goods**

NowChem may at its absolute discretion agree to the return of non-defective products delivered to a Customer. Unless otherwise agreed, all returns of products shall generate a credit on the Customer's Credit Account and not a refund, or where the Customer does not have a Credit Account, a credit for future purchases of product from NowChem.

NowChem will only permit the return of non-defective products within its current catalogue of products being NowChem branded products. NowChem will not accept return of contract manufactured products, Customer branded products, products made to a Customer order or products developed and or made pursuant to a manufacturing agreement or arrangement between NowChem and the Customer.

NowChem reserves the right to charge a fee for the return of non-defective products to cover its costs and expenses in dealing with the returned products, including but not limited to re-stocking, re-purposing or destruction or disposal of the returned products.

Arrangements for, and the costs of, transport and insurance for any returned products shall be the responsibility of the Customer. This includes returned empty drums and IBCs that are subject to a Drum or IBC return deposit.

The terms of this clause shall not apply to products ordered and delivered by NowChem that do not conform to their advertised and published specification or were delivered in error to the Customer by NowChem. Arrangements for, and the costs of, transport and insurance for any such returned products shall be the responsibility of NowChem.

## **BOLIERPLATE PROVISIONS**

### **Intellectual Property Rights**

Any and all Intellectual Property Rights, in and to any products supplied by NowChem under these Terms, shall vest in and remain the property of NowChem, or its licensor(s), and unless expressly indicated otherwise in these Terms, nothing in these Terms shall transfer or grant any right, title or interest in or to any product in or to the Customer.

### **Liability**

To the full extent possible by law, and except where expressly indicated, NowChem expressly and impliedly excludes any and all liability under these Terms, and makes no warranties, guarantees, representations or indemnities in relation to the products, their use and fitness for any purpose or infringement of any third party intellectual property rights.

NowChem's total aggregate liability under these Terms shall not exceed an amount that is the value of the product to which the liability relates.

### **Force Majeure**

NowChem shall have no liability to the Customer under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or incidents beyond its reasonable control, including, without limitation, disease epidemic or pandemic, strikes, lock-outs or other industrial disputes (whether involving the workforce of NowChem or any other party), failure or under performance of a utility service or telecommunications network, hacking, denial of service attacks, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers of equipment or raw materials, default of sub-contractors or the unavailability of raw materials on commercially viable terms. NowChem shall use its reasonable efforts to notify the Customer of such an event and its expected duration.

### **Variation of these Terms**

NowChem reserves its rights to vary these Terms at its sole and absolute discretion. NowChem shall notify the Customer that it has varied these Terms giving the Customer 30 days to reject them. Where the Customer rejects the varied Terms, NowChem shall not be required to supply any products to the Customer after the expiry of the 30-day period. Any and all orders placed within that 30-day period shall be on the Terms as they were before the variations. Unless otherwise agreed in writing, any and all orders placed after that 30-day period shall be on the varied Terms. Acceptance of an order by the Customer under the varied Terms shall be deemed to be acceptance of the varied Terms.

### **Governing Law**

These Terms shall be governed by and construed under the laws and regulations of New South Wales.

### **Precedence of the Terms**

All orders placed by the Customer with NowChem shall be on these Terms, and no others. Any terms and conditions of supply and purchase provided by the Customer to NowChem, or deemed to govern the supply and purchase of products between NowChem and the Customer, such as terms on a Customer's purchase order, shall not apply to the supply and purchase by the Customer of products from NowChem.

### **Entire Agreement**

These Terms (and any manufacturing agreement between NowChem and the customer) contain the entire agreement between the Parties, and shall supersede all previous agreements, arrangements and

communications between the Parties, either oral or written, in relation to the arrangements between the Parties and the subject matter of this Agreement, including the ordering, purchase, supply and delivery of products.

### **Severance**

If any provisions of this Agreement should become fully or partially invalid or unenforceable for any reason whatsoever, or violate any applicable law, such provisions shall be deleted from this Agreement, and the remainder of this Agreement, to the extent permissible, shall be valid and binding as if such provision(s) were not included herein.

By signing this Agreement below, the parties agree to be legally bound on the terms and conditions set out in these Terms.

### **[CUSTOMER] PTY LTD**

in accordance with section 127 of the  
*Corporations Act 2001* signed by two  
directors or the sole director/secretary:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director or secretary (if  
applicable)

\_\_\_\_\_  
Name of director (please print)

\_\_\_\_\_  
Name of director or secretary (please  
print)

Date: \_\_\_\_\_

\_\_\_\_\_

**OFFICE USE ONLY**  
**NOWRA CHEMICAL MANUFACTURERS**  
**PTY LTD**

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Signature of Authorised Representative

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Name of Authorised Representative  
(please print)