

Terms and Conditions of Sale

Any order for goods or services made between International Chemicals Engineering (**I.C.E.**) ABN 52 058 217 566 and any buyer (**Buyer**) relating to any goods, services or transactions are subject to the following Terms and Conditions of Sale (**Terms**) unless otherwise agreed in writing.

1. DEFINITION

In these terms and conditions:

“**Goods**” means all Products and services agreed to be supplied by I.C.E. to the Buyer under any contract arrangement or understanding between I.C.E. and the Buyer;

“**Buyer**” means the person to whom any quotation is made, any person offering to Contract with I.C.E. on these Terms and any person who purchases Goods from I.C.E.;

“**Contract**” means any contract for the sale or supply of Goods entered into between I.C.E. and the Buyer;

“**I.C.E.**” means International Chemicals Engineering Pty Ltd and its agents, servants and employees and any related bodies corporate as defined in the Competition and Consumer Act 2010 (**Australian Consumer Law**);

“**Products**” includes liquids in containers and goods (as defined in the Australian Consumer Law); and

“**Quoted Date**” means the date of delivery as agreed between the Buyer and I.C.E.

2. STATUTORY PROVISIONS

These terms and conditions:

Shall be subject to the provisions of the Australian Consumer Law. Unless I.C.E. otherwise agrees in writing these are the only Terms to which I.C.E. will be bound and the Buyer agrees that I.C.E. Terms will in all circumstances prevail over the Buyer’s terms and conditions of purchase (if any); and Supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relation to the supply of the Goods including, but not limited to those in relation to the performance of the Goods or the results that ought to be expected from using the Goods.

3. WARRANTIES

Subject to the provisions of the Australian Consumer Law:

- (a) I.C.E. warrants that the Goods supplied are of merchantable quality;
- (b) ICE warrants that liquids supplied pursuant to this Contract satisfy compositional standards;
- (c) ICE’s liability for breach of sub-clause 3(a) or (b) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions of the Australian Consumer Law, is limited to any one of the following as determined by ICE:
 - (i) The replacement of the Goods or the supply of equivalent Goods; or
 - (ii) The refund of the price paid by the Buyer for the Goods.

The Buyer will examine or test the Goods for defects and shall notify I.C.E. of any defects in writing within 30 days of delivery. If the Buyer does not notify I.C.E. within 30 days of delivery the Buyer shall be deemed to have accepted the Goods. To the extent the law permits and notwithstanding any other clause of these terms and conditions, I.C.E. excludes all liability whatsoever to the Buyer arising out of or in any way connected in contract, tort or otherwise for consequential or indirect losses of any kind whatsoever including but not limited to, loss of profit, loss of contracts, or loss of turnover. Consequential or indirect losses will be taken to include but not be limited to any loss of income, profit or business; in the nature of the overhead costs; and of goodwill or reputation.

4. Advice

The Buyer hereby acknowledges that it has not relied on any service involving skill or judgement, or on any advice,

recommendation, information or assistance provided by ICE in relation to the Goods or their use or application.

5. Delivery

I.C.E. will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the Quoted Date, but I.C.E. shall not be liable for any failure to deliver or delay in the delivery for any reason. Time of delivery is a material element of this agreement.

6. Risk

- (a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.
- (b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to I.C.E. that in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations and to comply with all necessary and or relevant permits or licences pertaining to the storing and handling of the Goods and the Buyer shall ensure that the Buyer’s agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures in relation to the storing and handling of the Goods.
- (c) If I.C.E. does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.

7. Title

- (a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.
- (b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as Bailee of I.C.E. and that a fiduciary relationship exists between the Buyer and I.C.E.
- (c) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of I.C.E. I.C.E. shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.
- (d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as fiduciary agent of I.C.E. provided that such sale does not give rise to any obligations on the part of I.C.E. The Buyer shall hold the proceeds of such sale on trust for I.C.E. in a separate account.
- (e) If title in and to the Goods has not passed to the Buyer in accordance with this clause the Buyer’s implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in paragraph 10(b)(i)–(v) hereof.

8. Price

Unless otherwise agreed in writing the price charged for the Goods shall be the price ruling as determined by I.C.E. at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

9. Force Majeure

Deliveries may be totally or partially suspended by I.C.E. during any period in which I.C.E. may be prevented or hindered from manufacture, delivery or supply through any circumstances outside I.C.E.'s reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. I.C.E. shall not incur any liability to the Buyer in respect of such suspension.

10. Payment and Default.

- (a) Subject to sub-clause 10(c) hereof and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by I.C.E.
- (b) If any of the events set out in paragraphs (i) to (v) below occur, I.C.E. may at its option withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which I.C.E. has or might otherwise have had and all moneys owing and outstanding to I.C.E. on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:
- (i) The Buyer makes default in any payment or is unable or states that it is unable to pay its debts as and when they fall due;
 - (ii) The Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyers estate or any part of the Buyers property or assets;
 - (iii) The Buyer being a company executes a deed of company arrangement or passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
 - (iv) A receiver or receiver and manager, controller or administrator is appointed over any part of the property or assets of the Buyer;
 - (v) The Buyer experiences any analogous event having substantially similar effect to any of the events specified above.
- (c) Notwithstanding sub-clause 10(a) hereof I.C.E. may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyers credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of I.C.E. shall be final and I.C.E. accepts no liability or responsibility for any loss, howsoever arising incurred by the Buyer due to the operation of this clause.

11. Containers

Semi-Bulk Containers (SBC's) and Intermediate Bulk Containers (IBC's) in which goods are delivered remain the property of I.C.E. and must not be used for any other commodity than that contained therein at the time of delivery. SBC's and IBC's will be deemed to be still in the Buyers hands until received at I.C.E. store.

12. Pallets

Unless otherwise agreed to in writing all portable pallets on which Goods are delivered remain the property of I.C.E. and must be returned at the Buyers expense in good order and condition to the factory or the store of I.C.E. from which they were delivered. Pallets will be deemed to be still in the Buyer's hands until received at such factory or store. To the extent the law permits all risks whatsoever associated with pallets rest with the Buyer absolutely and the Buyers agrees to indemnify I.C.E. in respect of any pallet that is not returned in good order and condition to I.C.E. within one month of delivery of the Goods.

13. General Lien

In addition to any right of lien to which I.C.E. may be entitled under the common law, I.C.E. shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by I.C.E. to the Buyer. I.C.E. may in its sole discretion sell any item that is the subject of the lien, provided that I.C.E. shall pay to the Buyer the proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to I.C.E. in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by I.C.E.

14. Severance

If any provision of these terms and condition or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provision of these terms and condition shall not in any way be affected or impaired.

15. Governing Law

The supply of Goods under these terms and condition is governed by the law of the State of Victoria and I.C.E. and the Buyer submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

16. GST

- (a) I.C.E. charges goods and services tax (GST) at the applicable rate and unless otherwise indicated the price of the Goods is inclusive of GST. If I.C.E. decides that the supply of good is not subject to GST, it will not charge GST.
- (b) If either party is liable to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by the other (under clause 3 or otherwise) or another party, the amount required to be paid, reimbursed or contributed by the first part will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

17. Limitation of Liability

Notwithstanding anything to the contrary in the Contract, including all documents making part thereof and to the maximum extent permitted by law, in no event shall I.C.E., nor its suppliers shall be liable, whether in contract, warranty, failure of a remedy to achieve its intended or essential purposes, tort (including negligence), strict liability, indemnity or any other legal theory, for loss of use, revenue or profit, or for costs of capital or of substitute use or performance, or for indirect, special, liquidated, incidental or consequential damages, or for any other loss or cost of a similar type, or for claims by Buyer for damages. I.C.E.'s maximum liability under this contract shall be the contract price. The Buyer and I.C.E. agree that the exclusions and limitations set forth in this document are separate and independent from any remedies which The Buyer may have hereunder and shall be given full force and effect whether or not any or all such remedies shall be deemed to have failed of their essential purpose.

18. Hire Equipment

We agree to hire the Buyer equipment in good working order and the Buyer agrees to maintain the equipment in good condition at all times. The Buyer agrees to pay for charges to clean and repair hire equipment if the Buyer does not return the equipment in clean and good working condition. The Buyer acknowledges that I.C.E. own the equipment and in all circumstances I.C.E. retain title to the equipment. The Buyer's rights to use the equipment are as Bailee only. The Buyer is not entitled to lease, hire, assign, create any form of security interest, sub-let or give possession of the equipment to anyone unless I.C.E. first consents in writing.