

1. **Governing Terms and Conditions**

- (a) The terms and conditions in this document apply to the sale of Goods by us to you. These terms and conditions prevail over any terms or conditions in your documents and represent the entire agreement between us. To avoid inconsistent provisions applying, no purchase order confirmation or other document issued by you will vary this agreement.
- (b) When you place an order for Goods with us, accept delivery of Goods, make payment or comply with these terms and conditions, you are taken to have accepted them.

2. **Definitions**

Account means an account within the meaning of the PPSA;

Chattel Paper means chattel paper within the meaning of the PPSA;

Contract means any contract between you and us in relation to the Goods;

Goods means all or any part of materials supplied or to be supplied to you by us;

PMSI means a 'purchase money security interest' as defined in the PPS Act;

PPS Act means the *Personal Property Securities Act 2009 (Cth)*;

Proceeds means 'proceeds' as defined in section 31 of the PPS Act;

Secured Moneys means all debts and monetary liabilities you owe to us on any account or under or in relation to any agreements between us for the sale of Goods and in any capacity and irrespective of whether the debts or liabilities:

- (i) are present or future;
- (ii) are actual, prospective, contingent or otherwise;
- (iii) are at any time ascertained or unascertained;
- (iv) are owed or incurred by or on account of you alone, or severally or jointly with any other person;
- (v) are owed to or incurred for the account of us alone, or severally or jointly with any other person;
- (vi) are owed to any other person as agent (whether disclosed or not) for or on behalf of us;
- (vii) are owed or incurred as principal, interest, fees, charges, taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- (viii) are owed to or incurred for the account of us directly or as a result of:
 - A. the assignment to us of any debt or liability of you; or
 - B. any other dealing with any such debt or liability;

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (ix) are owed to or incurred for the account of us before the date of this deed, before the date of any assignment of this deed to us by any other person or otherwise; or
- (x) comprise any combination of the above;

Security Agreement means a security agreement within the meaning of the PPS Act;

Security Interest means a security interest within the meaning of the PPS Act;

Verification Statement means a verification statement within the meaning of the PPS Act;

We, us and ours refers to Lyondellbasell Australia Pty Ltd ABN 42 004 327 762;

You refers to the person, firm or company by whom the order is placed or with whom the Contract is made.

3. **Personal Property Security Interests**

- (a) You acknowledge that under this agreement you grant Security Interests to us including without limitation:
 - (i) First, a retention of title in respect of the Goods (in accordance with clause 9);
 - (ii) Secondly, a charge over the Goods (in accordance with clause 10); and
 - (iii) Thirdly, a bailment of the pallets (in accordance with clause 18);
- (b) You acknowledge that this agreement constitutes a Security Agreement.
- (c) You acknowledge that we may perfect our Security Interests by lodging a financing statement on the Personal Property Securities Register established under the PPS Act.

4. **Quotations and Price**

- (a) If we give you a quotation, we are not making you an offer. We may withdraw or alter the quotation without giving you notice. If we do not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for 30 days from the date the quotation was given.
- (b) Any description of the Goods in a quotation or elsewhere is given for the purposes of identification only and the use of that description will not constitute a contract of sale by description.
- (c) An order placed by you will become binding on us only when we accept it in writing or when we deliver the Goods, whichever is earlier.
- (d) Unless we otherwise agree in writing, the price of the Goods will be the price we usually charge for the Goods. Any price concession or discount we provide you is conditional on your full compliance with this document. We reserve the right to vary the price charged for the Goods.

5. **GST**

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (a) Unless we state otherwise, the price does not include goods and services tax (GST) (as defined in Australia in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or as payable in New Zealand under the Goods and Services Tax Act 1985).
- (b) You must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the price.
- (c) If a government or other competent authority imposes, alters or repeals any tax or other levies in connection with the manufacturing, sale, exports or delivery (including but not limited to any tax or other levies on raw materials), we may adjust the price accordingly at any time, or we may rescind the Contract on written notice to you.

6. Payment

- (a) Unless we otherwise agree in writing, you must pay us for the Goods you buy within 21 days after the end of the month in which we deliver the Goods to you, without setting off any amounts we may owe to you. We reserve the right to set off any amount we owe to you, against any amount you owe to us.
- (b) We may require immediate payment of all unpaid monies (whether or not actually due by you):
 - (i) if any of the following occurs:
 - A. an order is made, or a resolution is passed, to wind you up, a meeting is called to consider a resolution to wind you up or a provisional liquidator is appointed;
 - B. a receiver or receiver and manager is appointed over the whole or part of your business or assets;
 - C. you enter any arrangement or composition with any of your creditors;
 - D. you are placed under administration or a meeting is called or some other step taken to place you under administration;
 - E. you cannot pay your debts as they fall due; or
 - F. you do not comply with this document; or
 - (ii) if we consider (in our absolute discretion) that your creditworthiness has become unsatisfactory.
- (c) If you do not pay in full by the due date, we may charge you a late payment fee. This late payment fee is a daily charge applied on each day from the due date until full payment is made, and is a reasonable pre-estimate of our loss resulting from your failure to make payment when it is due. The daily charge (including GST) is the overdue amount multiplied by the Daily Rate. The Daily Rate is the rate determined by dividing the Annual Rate by 365. On any day the Annual Rate is the rate that is 2% per annum above the prevailing ANZ prime overdraft rate for overdrafts of \$100,000 or more.
- (d) You must pay all expenses incurred by us in enforcing our rights under this document.

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (e) We may require you to pay cash when or before we dispatch the Goods, or to provide security that we deem satisfactory.
- (f) If you fail to make any payment in full as and when it is due and until the payment has been made, or if any of the events referred to in Clause 6(b) occur, we may, in addition to other things, withhold any Goods or parts of Goods in transit, suspend or cancel the supply of Goods under any accepted order or suspend the acceptance of any further orders made by you.
- (g) Any order made by you or quotation given by us is subject to general credit approval and specific credit limits we set for you in our reasonable discretion. If you place an order which, on its own or cumulated with the value of previous orders for which we have not received payment in full, exceeds the credit limit set by us for you, we may in our absolute discretion, at any time and without notifying you, suspend or cancel those orders or all or any part of any delivery under such orders, for as long as your credit limit is exceeded, including any order which we have already confirmed.

7. Delivery

- (a) Any delivery time we give you is only an estimate. We are not liable to you for any loss or damage you suffer or incur as a result of our late delivery.
- (b) You must still accept and pay for the Goods even if we deliver late.
- (c) The terms of delivery will be as agreed between you and us for each order. The terms of delivery will be interpreted on the basis of Incoterms 2000, except in the case of a conflict with this document (in which case this document will prevail) or unless otherwise agreed.
- (d) Unless we otherwise agree in writing, delivery takes place when we notify you that you may collect the Goods from our premises or the Goods are otherwise collected from our premises on your behalf.
- (e) We may deliver the Goods in instalments. Each instalment will be treated as a sale under a separate contract. If we fail to deliver any instalment, you must still accept and pay for the remaining instalments. If you do not pay for an instalment, we may treat the non-payment as a breach of contract relating to the other instalments.
- (f) If we agree to arrange delivery of the Goods to your premises, you undertake to provide adequate and proper facilities for the reception and storage of the Goods as at the expected delivery date and you warrant that those facilities comply with all relevant statutes or regulations, including health and safety regulations and that all necessary permits and licences have been obtained.

8. Risk

Risk of damage to, or loss of, the Goods passes to you at the time of delivery. We are not liable to you for any loss or damage or deterioration of the Goods after delivery, even if we arrange freight.

9. Title

- (a) We retain title to and ownership of the Goods until you have paid all monies you owe us (and all cheques or negotiable instruments have been paid) in respect of the supply of the Goods.

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (b) You acknowledge and agree that:
 - (i) our rights in the Goods established by clause 10(a) are a PMSI; and
 - (ii) we will have a PMSI in any Proceeds of those Goods.
- (c) Until title passes to you, you hold the Goods on our behalf as bailee and you acknowledge that a fiduciary relationship exists between you and us. You must store the Goods so that they are clearly identifiable as belonging to us, and you must return the Goods to us if we ask you to. We can retake possession of any Goods in your possession if any of the events in clause 6(b) occur. You must take out and pay for insurance sufficient to cover both our interests in the Goods. The insurance must be in both our names. You must produce a certificate of insurance to show that you have taken out this insurance if we ask you to do so.
- (d) Within 7 days after the end of each month, you must, if requested by us, give us a statement for the relevant month showing the quantity and type of Goods you have used or sold and the quantity and type in your possession. You must keep accurate records to support the monthly statements. You must allow us to look at and copy your records to verify the monthly statements.
- (e) You must allow us to enter any premises under your control where the Goods are kept.
- (f) Even if title in the Goods has not passed to you, you may use the Goods in, or subject the Goods to, any manufacturing, mixing or other value adding process (Value Adding Process). If you do this:
 - (i) title in and to the Goods will remain with us, unless the effect of the Value Adding Process is to destroy the essential identity or character of the Goods, even if benefit accrues to us as a result;
 - (ii) where the essential identity or character of the Goods is destroyed, you will hold such part of the product of the Value Adding Process as relates to the price of the Goods which form part of, or a constituent ingredient of, the product on trust for us (Value Added Goods).
- (g) You acknowledge that, if you sell any Goods or Value Added Goods before you have paid for all Goods in full, you sell them as a fiduciary agent of us, provided that such sales will not give rise to any obligations on our part. You will hold the price of the Goods, or the part of the proceeds that relate to the Goods, on trust for us. You must hold these proceeds in a separate account that clearly identifies the proceeds as monies held on trust for and on behalf of us.
- (h) In respect of Goods supplied in New Zealand, by accepting delivery of the Goods, you agree that these terms constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999.
- (i) You acknowledge that under this clause 9 we have a Security Interest (for the purposes of the PPS Act) in the Goods and any Proceeds until you have paid for the Goods in full. You acknowledge that the Security Interest over the Goods (or the proceeds) is a “purchase money security interest” under the PPS Act to the extent that it secures payment of the amounts owing in relation to the Goods. You will do anything reasonably required by us to enable us to register the Security Interest, with the priority we require, and to maintain the registration.

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (j) The Security Interest arising under this clause 9 attaches to the Goods when you obtain possession of the Goods and the parties confirm that they have not agreed that any Security Interest arising under this clause 9 attaches at any later time.

10. **Charge**

In addition to our rights in clause 10, as security for the due and punctual payment of the Secured Moneys, you:

- (a) charge and grant a Security Interest in all of your present and future rights and interest in the Goods to us; and
- (b) charge to us, as an additional and separate Security Interest, all present and future Accounts, Chattel Paper and all other rights or choses in action which form part of or relate to the Goods or any part of them at any time.

11. **PPS Act enforcement provisions**

- (a) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these terms, except as excluded by (b).
- (b) The following provisions of the PPS Act will not apply to the enforcement of this these terms:
 1. section 95 (notice of removal of accession), to the extent that it requires us to give a notice to you;
 2. subsection 121(4) (enforcement of liquid assets – notice to grantor);
 3. section 130 (notice of disposal), to the extent that it requires us to give you a notice;
 4. paragraph 132(3)(d) (contents of statement of account after disposal);
 5. subsection 132(4) (statement of account if no disposal);
 6. section 135 (notice of retention);
 7. section 142 (redemption of collateral); and
 8. section 143 (reinstatement of security agreement).

12. **Quantity Discrepancy**

If the quantity of Goods delivered is less than the amount you ordered, you must notify us in writing of the shortfall within 7 days after delivery, otherwise we will assume that the correct quantity of Goods has been delivered, and you must accept the Goods and pay for them in full despite the shortfall.

If the quantity of Goods delivered is more than the amount you ordered, you must immediately inform us in writing and we are entitled to charge you for the excess or recover the excess from you.

13. **Force Majeure**

- (a) We are not liable for failure to comply with this document if the failure (directly or indirectly) arises out of any circumstances which are not within our reasonable

control. If such circumstances occur, we may delay or cancel delivery of the Goods or reduce the quantity to be delivered.

- (b) The following are examples of situations beyond our reasonable control: strikes; lock-outs; accidents; war (declared or undeclared); acts of terrorism; fire; flood; accident, explosion; shortage of power; breakdowns of plant or machinery; shortage of raw or other materials from normal sources of supply; acts of God; and any order or direction of any local, State or Federal Government, Government authority or instrumentality (within the Commonwealth of Australia or elsewhere).
- (c) We are not obliged to remedy such circumstances. We are especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

14. **Cancellation**

- (a) You cannot cancel any order or Contract or return any Goods unless we first agree in writing. We will not agree to any cancellation or return unless you indemnify us for all loss or damage we suffer or incur as a result of the cancellation or return. We may cancel any order or Contract if we consider we may be unable to supply you the Goods.
- (b) If any of the events set out in clause 4(b) occur or if the Goods remain uncollected after 14 days from when we tell you that the Goods are ready for collection, we may cancel the whole or part of an order or Contract by giving you notice. If we cancel in these circumstances, you must pay us for any loss or damage we suffer or incur as a result of the cancellation including costs and expenses we incurred before the cancellation and a reasonable cancellation fee we fix.
- (c) You have no claim against us and we are not liable to you for any damage, loss, costs or expenses which you may suffer or incur as a result of a cancellation under this clause.

15. **Technical Assistance**

- (a) Any technical advice, assistance, testing or reports furnished by us or any of our affiliates to you with respect to (i) the selection or use of the Goods delivered to you or (ii) the storing, handling or usage of Product (collectively, the "Technical Assistance") shall be given and accepted at your sole risk, and we shall have no liability whatsoever for the use of, or results obtained from, the Technical Assistance. You agree that we, our affiliates, agents, officers, directors, employees, representatives and insurers shall not be liable or responsible for any aspects of the Technical Assistance, including the preparation and delivery thereof. You agree to indemnify us, our affiliates, agents, officers, directors, employees, representatives and insurers from and against any and all loss, damage or liability resulting from demands, claims, suits, or actions with regard to any action relating to Technical Assistance. The indemnity provided shall include, but not be limited to court costs, attorney's fees, costs of investigation, costs of defense, settlements, and judgments associated with such demands, claims, suits or actions. The indemnification shall survive the cancellation, termination, completion, or expiration of this Contract.
- (b) You hereby agree that we shall have the right to immediately cease delivery of Goods to Buyer, pursuant to this Contract or otherwise, if, in our reasonable opinion, you fail to take necessary action, within a commercially reasonable time, to prevent or mitigate imminent endangerment to human health, safety, or the environment with regards to you, your representatives or agents', storing, handling and usage of the Goods.

16. **Limitation of Liability**

- (a) Except for such representations, warranties or guarantees as cannot be excluded by virtue of the Consumer Guarantees Act 1993 (New Zealand) or the Competition and Consumer Act 2010 (Australia), all terms, conditions, warranties or undertakings whether express or implied, statutory or otherwise, oral or written, relating to the sale of the goods, or to this Agreement are excluded to the fullest extent permitted by law.
- (b) Upon delivery of the Goods, you must examine them. If the Goods are not of merchantable quality, do not conform to any agreed specification, or have defects you must notify us in writing within 30 days of delivery. If you do not notify us within that period, you will be deemed to have accepted the Goods as being of merchantable quality, free from defects, and compliant with the agreed specification.
- (c) We have the right to examine the Goods the subject of a notification under paragraph (b) and you must either return the Goods concerned to us, or if they are not capable of redelivery, you must make them available for inspection by us and permit us to take samples.
- (d) If we determine that your claim is valid, our liability to you shall not in any case exceed:
 - (i) Replacing the Goods or supplying equivalent Goods; or
 - (ii) Paying the cost of replacing the Goods or of acquiring equivalent Goods,and the limitation shall apply to liability howsoever arising whether in contract or in tort (including negligence). In no circumstances will we be liable to you for any indirect, incidental, consequential or special loss, including loss of profits, goodwill or reputation, or any special or exemplary damages (even if you or we were advised of the possibility of such loss or damages).
- (e) You indemnify us for all liabilities, losses, damages, costs or expenses suffered or incurred by us as a result of any of the following:
 - (i) our compliance with your instructions regarding the Goods;
 - (ii) your failure to:
 - A. provide or display safety information on or relating to the Goods;
 - B. comply with laws relating to the use, sale, marketing, labelling or marking of goods; or
 - C. detect and bring to our attention matters for which we may become liable, whether for negligence, under legislation or otherwise;
 - (iii) any statement you make about the Goods without our written approval;
 - (iv) the use of Goods by you or a third party;
 - (v) any loss, damage or injury to person or to your property or to others arising out of the use or possession of the Goods sold to you, whether

those Goods are used singularly or in combination with any other substances or processes;

(vi) your negligence or breach of this document.

(f) You agree that:

(i) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption; and

(ii) you are acquiring the Goods for resupply or for using them up or transforming them in the course of a process of production or manufacture in your business.

(g) From the date on which the Goods or any part of them have been treated, processed or changed in any manner whatsoever, subject to any liability imposed by statute, you will have no claim whatsoever arising directly or indirectly out of the Goods or the sale of those Goods to you. You have the sole responsibility of determining whether the Goods are suitable for any use contemplated by you, whether or not we know about that use.

(h) You acknowledge that you have not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by us in relation to the Goods or their use in any application.

17. **Storage and Handling**

(a) We may charge you for storage if you do not collect the Goods or provide adequate delivery instructions within 14 days after we tell you that the Goods are ready for collection. You must pay the charges we specify when we ask you. Any Goods we store on your behalf are at your risk.

(b) In storing and handling the Goods, you must comply with all applicable laws, especially those relating to health, safety and the environment. When we give you written notice, you must allow us to enter premises under your control to inspect the storage and handling of the Goods.

18. **Pallets**

All pallets we supply with the Goods remain our property and must be returned to us at your expense in good and clean condition. We will invoice you for the cost of any pallets supplied with packed Goods and then reverse the invoiced amount provided the pallets are returned to us within 30 days.

19. **Variation**

We are entitled to vary the terms and conditions in this document at any time by giving you written notice.

20. **Waiver**

Even if we do not insist on strict performance of this document, we are not taken to have waived our right to later require strict performance. Even if we provide an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition in this document.

21. **Notices**

LYONDELLBASELL AUSTRALIA PTY LTD A.B.N. 42 004 327 762
STANDARD TERMS AND CONDITIONS OF SALE

- (a) Notices under this document must be in writing. A notice must be delivered personally or sent by facsimile transmission or post to the other person at their last known address.
- (b) We do not need to give you any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.

22. **Severability**

If any of these terms and conditions are invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

23. A Contract may not be assigned by you without our prior written consent. We may assign the Contract to another party, if we give you written notice of that assignment.

24. **Confidentiality**

The parties agree that neither party will disclose to an “interested person” (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. You will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

25. **Governing Law and Jurisdiction**

If you are an Australian entity, then these terms and conditions are governed by the law in force in Victoria, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which may hear appeals from those courts. If you are a New Zealand entity, then these terms and conditions are governed by the law in force in New Zealand, and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which may hear appeals from those courts.