

## ITW POLYMERS & FLUIDS CONDITIONS OF SALE

"Seller" means ITW Polymers & Fluids

### 1. **CONTRACT**

These Conditions of Sale shall apply to the contract between the Buyer and the Seller (the whole of which contract, including these Conditions of Sale, is hereafter referred to as "the contract"). Telegraphic, telephonic or verbal alterations and arrangements shall not be binding on the Seller unless and only to the extent that they are confirmed in writing by the Seller.

### 2. **WEIGHTS MEASUREMENTS, etc.**

Weights and measurements forming part of the contract and/or on any supplement are approximate only. Any descriptions of the goods which are the subject of the contract (hereinafter referred to as "the goods") shall not be deemed part of the contract unless specifically stated in writing by the Seller to be part of the contract.

### 3. **PRICES**

Unless otherwise stated the price referred to in the contract (hereinafter referred to as "the price") is subject to variation occurring after the date of contract in the event of changes in tariff or fiscal policy, exchange fluctuations, devaluation, change in wages or the price of raw materials or labour conditions, freight or insurance rates. The amount of such variation shall be determined by the Seller and shall be to the Buyers account.

### 4. **DELIVERY**

Delivery dates are calculated from the date of receipt by the Seller of all details required by it and are given by the Seller in good faith under existing conditions but are not to be of the essence of the contract. The Seller will take reasonable steps to effect delivery at the time indicated but will not be liable for delay in delivery or non-delivery or for damages at the time indicated but will not be liable for delay in delivery or non-delivery or for damages therefore from any cause whatsoever including (but without prejudice to the generality of foregoing) strikes, lock-outs, accidents, fire, war, outbreak of hostility, force, intervention by Government, storm, Acts of God or changes in shipping arrangements.

Unless otherwise specified in the contract, the cost of delivery by the Seller to the Buyers plant or site nominated by the Buyer is to the Buyers account.

### 5. **INSURANCE**

The Buyer at its expense shall insure the goods against all risks and during transport to the Buyers premises or site nominated by the Buyer (or failing such) behind doors.

### 6. **PASSING OF RISK**

The goods are at the Buyers risk when the same are despatched from the Sellers premises.

### 7. **PAYMENT**

a) Unless otherwise agreed, payment shall be made as follows:-

- (i) If the Buyer has a credit account with the Seller, cash on or before the last day of the month following the month during which the contract was made.
- (ii) If the Buyer does not have a credit account with the Seller, cash on delivery.

b) If payment is not made in accordance with this Clause, the Buyer will pay interest on any amount outstanding at the rate of 24.0 percent per annum calculated from the date of contract until the date of payment.

c) Any Commission payable to a collection agency will be fully recoverable from the Buyer.

### 8. **DEFAULT BY THE BUYER**

If the Buyer defaults in the payment of any money payable hereunder the Seller shall be entitled to terminate the contract and remove the goods from the Buyer's premises and thereafter either to sue the Buyer for breach of contract or to resell the goods as owner and the efficiency, if any, arising on such resale and all expenses and the incidentals to such removal and resale or attempted resale and the Buyers default shall be recoverable by the Seller from the Buyer as liquidated damages. The Seller may retain any money paid by the Buyer on account of the purchase as security for any deficiency arising out of the removal of the goods, on a resale or for any damages or compensation awarded to the Seller for the Buyers default. The Seller may enter and if necessary break into the or upon any premises of the Buyer where any of the goods are or are presumed to be for the purpose of removing the same.

### 9. **MANUFACTURER'S WARRANTY**

To the extent to which they are available by their terms all goods are sold subject to the manufacturer's warranty (if any) and to the manufacturer's terms and conditions of sale. Warranties do not cover normal wear and tear nor damages or destruction by accident or misuse.

### 10. **SELLER'S LIABILITY**

a) Pursuant to section 68A and section 74L of the Trade Practices Act this clause applies in respect of any of the goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will apply if the buyer establishes that reliance on it would not be fair or reasonable.

b) Liability for breach of a condition or warranty implied by law other than a condition implied by Section 69 of the Trade Practices Act is limited to:

- (1) In the case of goods, any one of the following as determined by the Seller:-
  - 1) The replacement of the goods or the supply of equivalent goods; or
  - 2) The repair of the goods; or
  - 3) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - 4) The payment of the cost of having the goods repaired.

c) The Seller's liability does not extend to indirect or consequential loss, damage or injury of any nature to persons or companies or property due to any cause whatsoever including (but without limited the generality of the foregoing) –

- (1) Negligence by the Seller or any servant or agent of the Seller.
- (2) Loss of production or profit or otherwise.

### 11. **REPRESENTATIONS**

The Buyer acknowledges that it has not relied on any representations made by the Seller, the Seller's agent or any other person, persons or corporations in and about entering into the contract between it and the seller other than as set out in these Conditions of Sale and agrees that no representation made by the Seller, the Seller's agent or any other person, persons, or corporation shall be binding upon the Seller or affect its right in any way whatsoever except in so far as they are included in these Conditions of Sale.

### 12. **CANCELLATION OF ORDER AND RETURN OF GOODS**

Unless otherwise agreed and confirmed in writing by the Seller, the Buyer may not cancel the order or refuse to accept delivery of the goods, and the Seller will not accept any goods that the Buyer purports to return to the Seller after they have been delivered.

If the Seller agrees that the Buyer may cancel the order or refuse to accept the goods or that it will accept goods that the Buyer returns to it and confirms that agreement in writing, the Buyer shall pay fifteen percent of the price to the Seller as a service charge.

### 13. **GOODS MANUFACTURED AT BUYER'S REQUEST**

If the goods are manufactured by the Seller at the Buyer's request, the following conditions shall be terms of contract:-

- a) The Buyer shall accept and shall pay for all of the goods delivered to it by the Seller equal to but not exceeding 110 percent of the quantity or amount ordered by the buyer.
- b) The cost of any material or product that the Seller purchases or manufactures in order to manufacture the goods is not included in the price and is to the Buyer's account.
- c) Any inventions, discoveries or improvements, whether patentable or not, made by the Seller arising from or in any way relating to the manufacture of the goods and any information concerning such inventions, discoveries or improvements shall belong to and be the absolute property of the Seller.
- d) The Buyer indemnifies and will keep indemnified the Seller from all claims and proceedings against the Seller as a result of work done by the Seller at the Buyer's request in accordance with design or specifications furnished to the Seller by the Buyer and which involve the infringement or alleged infringement of any copyright, letters patent, registered design or trade mark.

### 14. **LAW OF CONTRACT**

The contract shall take effect and be construed in accordance with the law of New South Wales and any action or legal process there under shall be brought or effected in the appropriate Court of New South Wales. The Buyer agrees to submit to the jurisdiction of the Courts of New South Wales.