

General Terms and Conditions

for the Sale of Goods



Akdeniz Chemson Additives Pacific Pty Ltd

ACN 003 230 635

1. Application of Terms and Conditions

- 1.1 These Terms and Conditions apply whenever Akdeniz Chemson sells and delivers Goods to the Buyer.
- 1.2 These Terms and Conditions apply to the exclusion of any other terms that the Buyer seeks to incorporate or impose, or which are implied by trade, custom, practice or course of dealing.
- 1.3 By placing a Purchase Order for the Goods, the Buyer accepts these Terms and Conditions.
- 1.4 Akdeniz Chemson may vary these Terms and Conditions by giving the Buyer not less than 30 days' written notice of the variation. Any Purchase Orders placed after the expiry of the notice period, if accepted by Akdeniz Chemson, will be subject to the revised Terms and Conditions.

2. Formulation

- 2.1 The Buyer must specify the Performance Characteristics it requires for a specific product and Akdeniz Chemson, in consultation with the Buyer, will design and manufacture the Good to meet such Performance Characteristics (**Formulation**). The description/name of the Good is unique and indicates the Formulation for that Good. All initial product design and testing of the Goods is undertaken at Akdeniz Chemson's cost.
- 2.2 The Buyer must only use the Goods and any samples and materials (such as product data sheets relating to the Goods) provided by Akdeniz Chemson for internal purposes and for re-sale, and the Buyer must handle the Goods and such samples and materials in compliance with good laboratory and manufacturing practice and all applicable laws. The Buyer must not carry out any research on the Goods or samples or analyse, attempt to modify or reverse-engineer or otherwise seek to determine the structure or Formulation of any Goods or materials or samples provided by Akdeniz Chemson pursuant to these Terms and Conditions.

3. Orders

- 3.1 Following agreement as to the Formulation of the Goods between Akdeniz Chemson and the Buyer (pursuant to clause 2.1), Akdeniz Chemson will provide the Buyer with a quotation for the Goods which will include a description of the Goods and the price for the Goods (**Quotation**). Subject to clause 4.3, the Quotation remains valid for three (3) months from the date of issue of the Quotation, unless Akdeniz Chemson agrees otherwise in writing.
- 3.2 The Quotation is merely indicative of pricing for the Goods and is not a Purchase Order or offer to supply the Goods.
- 3.3 The Buyer must place a Purchase Order with Akdeniz Chemson for the Goods in the form agreed between Akdeniz Chemson and the Buyer. By placing a Purchase Order for the Goods, the Buyer confirms that the Formulation satisfies the Performance Characteristics for the Goods.
- 3.4 A Purchase Order placed by the Buyer constitutes an offer to purchase Goods from Akdeniz Chemson which Akdeniz Chemson may, in its discretion, accept or reject. If Akdeniz Chemson accepts the Purchase Order, it will issue an Order Confirmation and a Contract will be formed.

4. Price

- 4.1 The price for the Goods is set out in the Quotation and will be confirmed in Akdeniz Chemson's Order Confirmation, and is, unless otherwise stated in the Order Confirmation, payable in Australian dollars.
- 4.2 The price for the Goods includes the cost of delivery to the Delivery Address, unless agreed otherwise.
- 4.3 Akdeniz Chemson may vary the price set out in a Quotation (within 3 months from the date of the Quotation, or after the expiry of that period) to reflect any significant or out of the ordinary price increase due to factors beyond its control, including but not limited to freight costs, delays caused by the Buyer, required changes to the Formulation, customs duties or other public levies, taxes or charges. Akdeniz Chemson will notify the Buyer of any such price increase in writing prior to issuing the Order Confirmation for the Goods (**Price Increase Notification**). If the Buyer wishes to proceed with the order for the Goods at the new price, the Buyer must issue a new Purchase Order detailing the order for the Goods and the revised price for the Goods. If Akdeniz Chemson accepts the new Purchase Order, it will issue an Order Confirmation.
- 4.4 The revised price for the Goods (determined in accordance with clause 4.3 above) will apply to all Goods which are the subject of a Purchase Order placed after the Price Increase Notification (until expiry of the pricing set out in the Quotation, after which the Buyer must request a new Quotation).

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5. GST

5.1 In this clause 5:

- (1) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires;
- (2) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (3) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member.

5.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of these Terms and Conditions or a Contract for any supply made under or in connection with these Terms and Conditions or a Contract does not include GST.

5.3 To the extent that any supply made under or in connection with these Terms and Conditions or a Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.

5.4 A party's right to payment under clause 5.2 is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply.

5.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

5.6 To the extent that any consideration to be paid or provided under these Terms and Conditions or a Contract represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:

- (1) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice) within 5 Business Days of becoming aware of the adjustment event; and
- (2) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST within 10 Business Days of receipt of the adjustment note or tax invoice.

6. Delivery

6.1 Akdeniz Chemson will deliver the Goods to the delivery address specified in the Purchase Order (**Delivery Address**) using the delivery method confirmed in the Order Confirmation, unless otherwise agreed in writing.

6.2 Akdeniz Chemson will use its reasonable endeavours to meet the delivery timeframes confirmed in its Order Confirmation but will not be liable if delivery is delayed. Any timeframes provided for delivery are an estimate only. Akdeniz Chemson will not be liable for any loss arising from delayed delivery (unless such delay is due to Akdeniz Chemson's own negligence or wilful default). If Akdeniz Chemson becomes aware that it will be unable to deliver the Goods by the delivery date requested in a Contract (or subsequently agreed with the Buyer), Akdeniz Chemson will give the Buyer as much notice as reasonably possible of such delay. Delayed delivery will not entitle the Buyer to cancel the Contract.

6.3 The Buyer must take delivery of the Goods at the Delivery Address, and sign any documentation required by Akdeniz Chemson in order to confirm receipt of the Goods.

6.4 Unless otherwise expressly agreed in writing, Akdeniz Chemson may deliver a surplus /short delivery of Goods up to and including ten per cent (10%) of the ordered quantity or weight of Goods detailed in a Contract. The Buyer may not reject the Goods on the basis of such surplus or shortage and a pro-rata price adjustment will be made by Akdeniz Chemson. The net weight indicated on Akdeniz Chemson's dispatch note is conclusive evidence of the weight of Goods delivered.

6.5 If the import regulations of the country of destination prohibit deviations from the ordered amount, the Buyer must inform Akdeniz Chemson when placing the Purchase Order. If the Buyer fails to do so, the Buyer agrees to indemnify Akdeniz Chemson for all costs, losses, expenses, fines, demands and damages Akdeniz Chemson may incur which are caused or contributed to by the Buyer's failure to notify Akdeniz Chemson of such import regulation requirements.

6.6 The Buyer acknowledges and agrees that the Goods may be delivered by partial delivery. If Akdeniz Chemson fails to deliver the Goods, Akdeniz Chemson's liability is limited (to the extent permitted by law) to the costs

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and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality at the best available market price, less the price of the Goods. Akdeniz Chemson is not liable for any failure to deliver the Goods to the extent that such failure is caused by Force Majeure or the Buyer's failure to provide Akdeniz Chemson with adequate delivery instructions or any other instructions that are required to supply the Goods.

7. Transfer of risk

7.1 Risk in the Goods passes to the Buyer upon delivery to the Delivery Address specified in the Contract. Any damage and/or loss to the Goods which occurs after the transfer of risk is the Buyer's responsibility, including if such damage and/or loss is due to the fault of third parties, acts of governments or Force Majeure.

8. Storage

8.1 Upon delivery of the Goods to the Buyer at the Delivery Address, Akdeniz Chemson recommends that the Goods are stored in accordance with:

- (1) good laboratory and manufacturing practice;
- (2) any product data sheets; and
- (3) any other storage instructions provided by Akdeniz Chemson from time to time.

8.2 If stored in accordance with clause 8.1, the Goods will satisfy the Performance Characteristics for the Goods for the Quality Assurance Period.

9. Terms of payment

9.1 Akdeniz Chemson will issue a separate written invoice for each Contract on the date of delivery of the Goods to the Buyer.

9.2 Subject to clause 9.3(4), the Buyer must pay all invoices in accordance with the payment terms agreed in writing by the parties and set out in the Contract.

9.3 If the Buyer fails to pay an amount on the due date for payment, Akdeniz Chemson may issue a reminder notice to the Buyer requiring payment within 7 calendar days. If Akdeniz Chemson does not receive payment of the full amount within the 7 day reminder period, the Buyer acknowledges and agrees that Akdeniz Chemson may:

- (1) charge interest at the Default Rate on the outstanding amount calculated and payable daily computed from the due date until the date that the amount is paid in full; and/or
- (2) suspend delivery of all Goods ordered by the Buyer under the Contract and any other Contract; and/or
- (3) refuse to accept future Purchase Orders from the Buyer; and/or
- (4) require payment in advance for all future Contracts with the Buyer until otherwise advised by Akdeniz Chemson.

9.4 In the event that the Buyer experiences an Insolvency Event, or its financial position otherwise deteriorates after the date of a Contract, Akdeniz Chemson reserves the right to vary the payment terms for future Purchase Orders (prior to any such Contracts being agreed.) Any such revised payment terms will be agreed between the parties and reflected in the relevant Contract.

9.5 Payments by bills of exchange or cheque must be free of interest and other costs for Akdeniz Chemson.

9.6 If payment is delayed, all of Akdeniz Chemson's costs in connection with issuing payment reminders and collection of the outstanding amount must be reimbursed by the Buyer. The Buyer must not set off any counterclaims or other amounts against any amount due to Akdeniz Chemson under a Contract or these Terms and Conditions.

10. Retention of title

10.1 A term that is used in italics in this clause 10 has the same meaning as in the PPSA.

10.2 Akdeniz Chemson retains title in the Goods until the money owing for the Goods and any other money owing by the Buyer to Akdeniz Chemson under a Contract or these Terms and Conditions has been paid (whether or not the Goods are delivered at different times, are the subject of separate invoices or, after delivery, may be determined by Akdeniz Chemson to be the subject of a specific invoice).

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- 10.3 Until title to the Goods has passed to the Buyer, the Buyer must:
- (1) store the Goods in safe custody separately from all other goods held by it so that they remain readily identifiable as Akdeniz Chemson's property;
 - (2) mark the Goods clearly and visibly as Akdeniz Chemson's property;
 - (3) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (4) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (5) notify Akdeniz Chemson immediately if it experiences an Insolvency Event;
 - (6) give Akdeniz Chemson such information relating to the Goods as Akdeniz Chemson may require from time to time; and
 - (7) allow Akdeniz Chemson to enter any premises where the Goods are stored, during business hours, to inspect the Goods.
- 10.4 If before title to the Goods passes to the Buyer, the Buyer experiences an Insolvency Event or has breached a Contract or these Terms and Conditions, then, without limiting any other right or remedy Akdeniz Chemson may have, Akdeniz Chemson may at any time:
- (1) require the Buyer to deliver to Akdeniz Chemson all Goods in its possession that have not been resold or irrevocably incorporated into another product; and
 - (2) if the Buyer fails to do so promptly, enter any premises of the Buyer or any third party where the Goods are stored in order to recover them. The Buyer indemnifies Akdeniz Chemson against any liability to any person in connection with the entry or reclamation.
- 10.5 Until the Goods have been paid for in full, the Buyer must not:
- (1) sell the Goods or use the Goods in a manufacturing or construction process, other than in the ordinary course of its business, in which case it grants to Akdeniz Chemson a *security interest* in either every payment to Akdeniz Chemson for the Goods or the portion of every payment for the manufactured product that relates to the Goods (both as *proceeds* of the Goods and as original *collateral*); and
 - (2) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to Akdeniz Chemson as a result of the use, manufacture or resale of the Goods.
- 10.6 The Buyer acknowledges and agrees that:
- (1) this clause 10 creates a *security interest* in all present and after acquired Goods and any *proceeds* as *security* for the Buyer's obligations to Akdeniz Chemson; and
 - (2) Akdeniz Chemson is a *secured party* in relation to the Goods and any *proceeds* of the Goods, and is entitled to register Akdeniz Chemson's interest on the *register* as:
 - (a) a *security interest*; and
 - (b) if applicable, a *purchase money security interest*.
- 10.7 Akdeniz Chemson may, by notice to the Buyer, require the Buyer to take all steps requested by Akdeniz Chemson to ensure Akdeniz Chemson's *security interest* in the Goods and the *proceeds* is enforceable, and to perfect, or better secure Akdeniz Chemson's position and the Buyer must comply with that notice.
- 10.8 Akdeniz Chemson is not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.
- 10.9 Neither party may disclose any information or documents supplied by another party that is not publically available, including: information of a kind referred to in section 275(1) of the PPSA; or the existence or content of a Contract or these Terms and Conditions.

11. Force Majeure

- 11.1 If an event of Force Majeure which affects Akdeniz Chemson or one of Akdeniz Chemson's suppliers, Akdeniz Chemson is entitled to:
- (1) extend the delivery periods for the Goods or other obligations under a Contract accordingly;
 - (2) suspend performance of a Contract; or terminate a Contract by giving not less than 14 calendar days' notice to the Buyer.

12. Quality assurance

- 12.1 Akdeniz Chemson undertakes quality control checks on the Goods prior to delivery to the Buyer.
- 12.2 Subject to clauses 12.4 and 12.5, Akdeniz Chemson warrants that on delivery, and for the Quality Assurance Period, the Goods will:
- (1) be free from material defects in design, material and workmanship; and
 - (2) subject to the Buyer's compliance with clause 8, satisfy the Performance Characteristics.
- 12.3 Subject to clauses 12.4 and 12.5, if the Buyer notifies Akdeniz Chemson during the Quality Assurance Period that a Good has failed as the Good does not satisfy, or no longer satisfies, the warranties set out in clause 12.2, the Buyer must provide Akdeniz Chemson with a sample of the defective Good and Akdeniz Chemson will inspect and conduct testing on that defective Good. If Akdeniz Chemson determines, following completion of its testing (acting reasonably), that the Good is defective and such failure was caused by Akdeniz Chemson, then Akdeniz Chemson will, in its absolute discretion:
- (1) replace the defective Goods with new Goods;
 - (2) replace the defective Goods with goods that are similar or equivalent Goods supplied by another supplier; or
 - (3) refund to the Buyer the value of the Goods that are defective.
- 12.4 Subject to law, Akdeniz Chemson is not liable for a failure of the Goods to comply with the warranties set out in clause 12.2 in any of the following circumstances:
- (1) the Buyer makes any further use of such Goods after giving notice of failure of the Goods in accordance with clause 12.3;
 - (2) the defect arises because the Buyer failed to follow Akdeniz Chemson's oral or written instructions as to:
 - (a) the storage, commissioning, installation, use and maintenance of the Goods;
 - (b) any product data sheets provided by Akdeniz Chemson; or
 - (c) good laboratory and manufacturing practice;
 - (3) the Buyer alters the Goods without Akdeniz Chemson's prior written consent;
 - (4) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal or inappropriate storage or working conditions; or
 - (5) the Goods differ from the Formulation as a result of changes made by agreement with or request of the Buyer to ensure they comply with applicable statutory or regulatory requirements.
- 12.5 Subject to compliance with these Terms and Conditions and subject to any applicable laws, Akdeniz Chemson will not be liable for any failure arising from a product manufactured using the Goods (except to the extent that such liability arises from Akdeniz Chemson's negligence or wilful default). The Buyer must undertake all testing and quality assurance procedures as it considers appropriate to satisfy itself that the Goods are suitable for inclusion into any manufacturing process prior to incorporation of the Goods into that manufacturing process. The Buyer acknowledges and agrees that Akdeniz Chemson has no control over the use of the Goods or the suitability of the Goods for those manufacturing processes and that this is the responsibility of the Buyer.
- 12.6 Except as expressly set out in these Terms and Conditions, Akdeniz Chemson has no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in clause 12.2. Terms implied by legislation, including the Australian Consumer Law at Schedule 2 of the *Competition and Consumer Act 2010* (Cth), are, to the fullest extent permitted by law, excluded from a Contract and these Terms and Conditions.
- 12.7 These Terms and Conditions also apply to any replacement or re-supply of Goods by Akdeniz Chemson.

13. Limitation of Liability

- 13.1 Nothing in these Terms and Conditions limits or excludes a party's liability for:
- (1) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (2) fraud or fraudulent misrepresentation;
 - (3) wilful default; or
 - (4) any matter in respect of which it would be unlawful for it to exclude or restrict its liability.

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13.2 Subject to clause 13.1 and applicable law, the parties acknowledge and agree that:

- (1) Neither party will be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - (a) loss of profit;
 - (b) loss or corruption of data;
 - (c) loss of savings, goodwill or business opportunity; or
 - (d) any other indirect or consequential loss arising under or in connection with a Contract or these Terms and Conditions; and Akdeniz Chemson's total liability to the Buyer in respect of all other losses arising under or in connection with a Contract and these Terms and Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will in no circumstances exceed the price paid for the relevant Goods as specified in the relevant Contract for the Goods.

14. Intellectual Property

- 14.1 Nothing in these Terms and Conditions affects any intellectual property rights of either Akdeniz Chemson or the Buyer existing prior to the date of these Terms and Conditions.
- 14.2 Any intellectual property rights in or arising out of or in connection with the Goods, including the Formulation, and any improvements made to any Formulation, which are requested by the Buyer, are owned by Akdeniz Chemson.
- 14.3 Akdeniz Chemson does not warrant that:
 - (1) the Goods will not infringe the intellectual property rights of any third party; and the incorporation of Akdeniz Chemson's Goods into manufacturing processes resulting in a final product for sale will not infringe the intellectual property rights of any third party.

15. Export control provisions, compliance

- 15.1 The Buyer must provide without delay at any time on Akdeniz Chemson's request all requested information, data and documents, of any nature, in relation to the ownership, control, and the officers of the Buyer and its ultimate beneficial owners, as reasonably required by Akdeniz Chemson for anti-money-laundering compliance. The Buyer must immediately inform Akdeniz Chemson of any and all changes to the accuracy of information provided pursuant to this clause.
- 15.2 The operation of a Contract is subject to law, including foreign trade laws.
- 15.3 The Buyer must carefully consider and comply with all provisions governing cross-border trade including foreign trade laws. The Buyer must use all Goods for peaceful and non-military purposes only. Further, the Buyer must comply with all laws regarding anti-bribery and corruption, competition law and tax law as well as any Akdeniz Chemson policies notified to the Buyer from time to time.

16. Termination

- 16.1 Without limiting any of Akdeniz Chemson's other rights or remedies, Akdeniz Chemson may terminate these Terms and Conditions and/or a Contract with immediate effect by giving written notice to the Buyer if:
 - (1) the Buyer commits a material breach of any term of a Contract or these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 5 calendar days of being notified in writing to do so; or
 - (2) the Buyer experiences an Insolvency Event.
- 16.2 Without limiting any of Akdeniz Chemson's other rights or remedies, Akdeniz Chemson may suspend the supply of the Goods under a Contract or any other contract between Akdeniz Chemson and the Buyer if:
 - (1) the Buyer experiences an Insolvency Event or Akdeniz Chemson reasonably believes that the Buyer is likely to experience an Insolvency Event; or
 - (2) the Buyer fails to pay any amount due under a Contract on the due date for payment, and Akdeniz Chemson has issued a reminder notice to the Buyer requiring payment within 7 calendar days and payment of such amount in full is not made within this 7 day period.
- 16.3 On termination of a Contract or these Terms and Conditions in accordance with these Terms and Conditions, the Buyer must immediately pay to Akdeniz Chemson all outstanding unpaid invoices and interest (calculated

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in the manner set out in clause 9.3).

- 16.4 Termination of a Contract or these Terms and Conditions will not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of a Contract or these Terms and Conditions that existed at or before the date of termination.
- 16.5 Any provision of a Contract or these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

17. Recall

- 17.1 If the Buyer is directed to assist in any suspension of supply or recall of Goods for any reason by Akdeniz Chemson or a government authority, the Buyer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall.
- 17.2 The reasonable and necessary cost and expense of such suspension or recall will be borne by:
- (1) Akdeniz Chemson, where the reason for the suspension or recall is fault in the manufacture of the Goods; and
 - (2) the Buyer where the reason for the suspension or recall is its act or omission.

18. Confidentiality

- 18.1 The Buyer irrevocably undertakes and agrees to keep a Contract, these Terms and Conditions and all other information, data, trade and business secrets, either provided by Akdeniz Chemson or obtained in any other way by the Buyer in connection with the business relationship with Akdeniz Chemson, confidential. The Buyer must not make any of the respective information, data, trade and business secrets available, in whatever kind, to any third party or the public without Akdeniz Chemson's prior written consent. The Buyer must use the respective information, data, trade and business secrets solely for the performance of a Contract. The Buyer must obtain Akdeniz Chemson's prior written consent before it refers to Akdeniz Chemson in any advertisement, publication, supplier list or lists Akdeniz Chemson as a reference.

19. Governing law and jurisdiction

- 19.1 The law of New South Wales governs these Terms and Conditions and all Contracts formed pursuant to these Terms and Conditions.
- 19.2 The UN Convention on Contracts for the International Sale of Goods is excluded.
- 19.3 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

20. Dispute resolution

- 20.1 Neither party may commence legal proceedings (other than for urgent interlocutory relief) in respect of any Dispute unless it has first complied with this clause 20.
- 20.2 If a party considers there is a Dispute:
- (1) the party must notify the other party of the Dispute and provide reasonable details in the notice of the Dispute and the facts, matters, circumstances and events giving rise to the Dispute; and
 - (2) each party must refer the Dispute to a representative and procure that the representative negotiates in good faith and uses reasonable endeavours to resolve the Dispute within 10 Business Days of the date the notice referred to in clause 20.2(1) of these Terms and Conditions is given (**Dispute Notice Period**).
- 20.3 If the Dispute is not resolved within the Dispute Notice Period, each party must refer the Dispute to a senior executive and procure that the senior executive negotiates in good faith and uses reasonable endeavours to resolve the Dispute within 20 Business Days of the expiry of the Dispute Notice Period) (**Discussion Period**).
- 20.4 If the Dispute is not resolved by the end of the Discussion Period (unless such period is extended by agreement of the parties), it may be submitted to arbitration by either party notifying the other party in writing. The arbitration will be conducted in accordance with the arbitration rules of the Resolution Institute. There will be one arbitrator, the language of arbitration will be English, the place of arbitration will be Sydney and the arbitrator's decision will be final and binding. If the parties cannot agree on the arbitrator, the arbitrator will be nominated by the Chair of the Resolution Institute.

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21. Waiver

- 21.1 No failure or delay by a party to exercise any right or remedy provided under a Contract, these Terms and Conditions or by law constitutes a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

22. Severance

- 22.1 If any provision of these Terms and Conditions or a Contract is unenforceable, illegal or void or makes these Terms and Conditions or a Contract or any part of it unenforceable, illegal or void then that provision is severed and the rest of the Terms and Conditions or Contract remains in force.

23. Assignment

- 23.1 Akdeniz Chemson may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Akdeniz Chemson's rights or obligations under a Contract and these Terms and Conditions. The Buyer may not assign, transfer, mortgage, charge, subcontract or deal in any other manner with all its rights or obligations under a Contract or these Terms and Conditions.

24. Notices

- 24.1 Any notice or other communication given to a party under or in connection with a Contract or these Terms and Conditions must be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and must be delivered personally, sent by pre-paid registered post, next Business Day delivery service, commercial courier or email to the party's nominated email address.
- 24.2 A notice or other communication is deemed to have been received:
- (1) if delivered personally, when left at the address referred to in this clause;
 - (2) if sent by pre-paid registered post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting;
 - (3) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
 - (4) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

25. Definitions

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales, Australia;

Buyer refers to the person who purchases Goods from Akdeniz Chemson;

Akdeniz Chemson means Akdeniz Chemson Additives Pacific Pty Ltd (ACN 003 230 635) of Unit 3, 2 Capicure Drive Eastern Creek NSW 2766;

Contract means a contract to sell the Goods between the Buyer and Akdeniz Chemson in accordance with these Terms and Conditions. A Contract is formed when Akdeniz Chemson issues an Order Confirmation;

Default Rate means $(x + 5)\%$ per annum where x is the interest rate quoted by the Westpac Banking Corporation as its Indicator Lending Rate;

Delivery Address has the meaning given to it in clause 6.1;

Dispute means a dispute, controversy or claim arising out of, relating to or in connection with these Terms and Conditions or a Contract, including any question regarding its existence, validity or termination;

Force Majeure means any circumstance or event beyond a party's control, such as epidemics, mobilisation, war, civil commotion, strikes, terror, forces of nature etc., as well as in the event of lack of staff, delays in the delivery of important parts by a party's suppliers, disruption of operations, unpredictable damage to the system, energy outage, transport hindrances or accidents, bans on imports, exports or passage in transit imposed by relevant authorities and any resulting difficulties, traffic disruptions, transport and customs clearance delays;

Formulation has the meaning given to it in clause 2.1;

Goods means the goods supplied by Akdeniz Chemson pursuant to these Terms and Conditions;

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GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;

Insolvency Event means;

- (1) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (2) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (3) the Buyer's financial position deteriorates to such an extent that in Akdeniz Chemson's reasonable opinion the Buyer's capability to adequately fulfil its obligations under a Contract is at risk;

Order Confirmation means a confirmation of the Buyer's Purchase Order which may be by email or phone, by an authorised representative of Akdeniz Chemson, but excluding any automatically generated emails. The Order Confirmation will confirm the details of the Purchase Order, (except as otherwise agreed between the parties) and will be subject to these Terms and Conditions;

Performance Characteristics means the functional and performance characteristics of the Goods, notified to Akdeniz Chemson prior to Akdeniz Chemson developing the Formulation for the Goods;

PPSA means *Personal Property Securities Act 2009* (Cth);

Price Increase Notification has the meaning given to it in clause 4.3;

Purchase Order means an order for the Goods, in the form agreed by Akdeniz Chemson and the Buyer from time to time, which includes, at a minimum, the Goods to be ordered, the volume or quantity of the Goods requested, Delivery Address and required date of delivery;

Quality Assurance Period means a period of 12 months from delivery of the Goods;

Quotation has the meaning given to it in clause 3.1; and

Terms and Conditions means these general terms and conditions for the sale of Goods, and any schedule, annexure or appendix to these terms and conditions.

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