



**INCITEC PIVOT LIMITED (ABN 42 004 080 264) AND ITS WHOLLY OWNED SUBSIDIARIES (IPL)
TERMS AND CONDITIONS OF BUSINESS IN AUSTRALIA (Excluding Dyno Nobel Asia Pacific
Pty Ltd.)**

EFFECTIVE 31 August 2016

Statutory provisions

1. These Terms and Conditions are subject to the provisions of the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law, any amendment or re-enactment of that Act for the time being in force and any other relevant and applicable provision of State and/ or Commonwealth legislation.

Terms and conditions

2. IPL may vary these Terms and Conditions and will make available the replacement Terms and Conditions at www.fertshed.com.au (for IPF Dealers) or www.incitecpivot.com.au for all other Customers. If this occurs, by placing an Order or, in respect of IPF Dealers, accepting a Quote Confirmation, the Customer will be deemed to accept the replacement Terms and Conditions.
3. These Terms and Conditions are to the exclusion of any terms and conditions submitted at any time by the Customer, whether printed on or sent with any order form or otherwise.
4. These Terms and Conditions together with any notice given to the Customer by IPL and any written agreement entered into between the Customer and IPL constitutes the entire agreement between the parties in connection with the supply of Products. If there is an inconsistency between these Terms and Conditions and any written agreement duly signed by IPL and the Customer, the written agreement shall prevail to the extent of the inconsistency.
5. These Terms and Conditions replace all prior Terms and Conditions relating to the supply of Products issued by IPL.

Price

6. The purchase price for Products will be the Price. Unless otherwise provided in writing, the Price for Products does not include freight charges, which are the responsibility of the Customer.
7. The Customer must pay the Price for Products and Services as set out in the invoices issued by IPL to the Customer.

Purchase Contracts (IPF Dealers only)

8. The IPF Dealer may request a quotation from IPL.
9. IPL may in its absolute discretion issue a Quote Confirmation to the IPF Dealer. Such Quote Confirmation may be on the same terms, or on different terms, to the quotation requested by the IPF Dealer.
10. A Quote Confirmation constitutes an offer on the part of IPL to make the Contract Volume available to the IPF Dealer at the Price during the Contract Period. A Quote Confirmation is irrevocable during the period for acceptance set out in the Quote Confirmation.
11. A Quote Confirmation may be accepted by the IPF Dealer within the period for acceptance set out in that Quote Confirmation.
12. If a Quote Confirmation is not accepted by the IPF Dealer within the period for acceptance set out in that Quote Confirmation, the Quote Confirmation shall lapse and will not be capable of acceptance by the IPF Dealer.
13. If an IPF Dealer accepts a Quote Confirmation in accordance with clause 11:

- (a) a Purchase Contract is formed between the IPF Dealer and IPL;
- (b) the IPF Dealer must take delivery from IPL of a minimum of 90% of the Contract Volume at the Price during the Contract Period; and
- (c) IPL must make available to the IPF Dealer a minimum of 90% of the Contract Volume at the Price during the Contract Period.

Purchase Orders (IPF Dealers only)

14. Product the subject of a Purchase Contract shall be made available by IPL to the IPF Dealer following receipt of a Purchase Order provided by the IPF Dealer.
15. Any Purchase Order provided by the IPF Dealer pursuant to a Purchase Contract is deemed to incorporate these Terms and Conditions.
16. IPL will make all reasonable efforts to have the Products despatched, or made available, to the IPF Dealer on or about the date agreed between the parties for that Purchase Order, but any such date is an estimate only and is not binding on IPL.

Breach of Purchase Contracts (IPF Dealers only)

17. If the IPF Dealer breaches its obligations to take delivery of Product in accordance with clause 13(b), the IPF Dealer must pay the Non Compliance Fee to IPL. IPL will issue an invoice to the IPF Dealer for the Non Compliance Fee and the Non Compliance Fee must be paid in accordance with that invoice and these Terms and Conditions,
18. If IPL breaches its obligations to make Product available in accordance with clause 13(c), the amount of the Supply Shortfall Fee shall be credited to the IPF Dealer's account with IPL and shall be set off against any amounts the IPF Dealer owes to IPL.
19. Except as expressly set out in a Purchase Contract, these Terms and Conditions will apply to the Purchase Contract and the supply of any Products the subject of a Purchase Contract.
20. Other than where the IPF Dealer has wilfully breached its obligations to take delivery of Product in accordance with clause 13(b), or where the Purchase Contract relates to blends of Products, IPL's only right or remedy in respect of the IPF Dealer's breach or threatened breach of its obligations to take delivery of Product in accordance with clause 13(b) is payment of the Non Compliance Fee.
21. Other than where IPL has wilfully breached its obligations to make Product available in accordance with clause 13(c), the IPF Dealer's only right or remedy in respect of a breach or threatened breach by IPL of its obligations to make Product available in accordance with clause 13(c), is payment of the Supply Shortfall Fee.

Orders

22. Any Order placed by the Customer for Products is deemed to incorporate these Terms and Conditions.
23. Any Order constitutes an offer on the part of the Customer which may be accepted by IPL. The receipt of an Order by IPL does not constitute acceptance of such Order by IPL. IPL may in its absolute discretion decline to accept any Order. IPL is under no obligation to notify the Customer if it declines to accept any Order and will incur no liability to the Customer for:
 - (a) declining to accept any Order; or
 - (b) failing to notify the Customer that it declines any Order.

24. IPL will make all reasonable efforts to have the Products despatched, or made available, to the Customer on or about the date agreed between the parties in relation to that Order, but any such date is an estimate only and is not binding on IPL.
25. IPL will not be liable for any failure to despatch or make available, or delay in despatch or availability, of the Products ordered under an Order for any reason.

Blends of Products (IPF customers only)

26. Despite anything else in these Terms and Conditions, due to the specific nature of any blend instructions, any Order or Purchase Contract for fertiliser blends will be deemed to be accepted by IPL once the blending process has commenced and:
 - (a) a Customer is obliged to accept delivery for the fertiliser blends;
 - (b) if the Customer fails to take delivery of fertiliser blends, the Customer:
 - (i) will be invoiced the Price for the blends of fertilisers; and
 - (ii) where the Customer is an IPF Dealer, will not be invoiced a Non Compliance Fee.

Payment and default

27. All amounts are due and payable not later than:
 - (a) the last business day of the month following the month during which the Products are despatched; or
 - (b) in respect of a Non Compliance Fee charged to IPF Dealers, the date set out in the relevant invoice, **(due date)**.
28. The Customer waives any right to combine any account that the Customer holds with IPL, or to set off any amount that is, or may become, owing by the Customer to IPL, against any amount owing by IPL to the Customer.
29. In the event of default of payment by the due date or breach of any other obligation, IPL will be entitled to:
 - (a) interest on all amounts overdue, from the end of the month during which the purchase is made until the date of payment in full, at the rate of 16.75% per annum (or such other rate as IPL may publish from time to time in lieu of that rate), calculated daily;
 - (b) compensation for the cost to IPL of recovering the overdue amount;
 - (c) payment for all purchases made by the Customer from IPL, the payment of which would otherwise not have been then due and payable;
 - (d) terminate or suspend despatch of any Order or Purchase Contract between IPL and the Customer;
 - (e) suspend or cancel the Customer's commercial credit account with IPL; and
 - (f) treat the Customer's default as a repudiation of any existing contract for the purchase of Products and recover any unpaid sum from the Customer by way of liquidated damages.
30. For the avoidance of doubt, IPL will not be:
 - (a) obliged to make Product available in accordance with clause 13(c); or
 - (b) liable to pay the Supply Shortfall Fee for failure to make Product available in accordance with clause 13(c), to any IPF Dealer that is in default of payment to IPL by the due date.
31. IPL may at any time at its sole discretion and without being under any duty or obligation to provide reasons, alter or terminate the Customer's credit limit or payment terms without notice.

Alternative payment options

32. IPL may, in its absolute discretion, offer the Customer:
 - (a) subject to IPL's normal credit procedures, credit to a limit established on an individual account basis to facilitate payment for purchases under these Terms and Conditions; or
 - (b) other payment options from time to time.

Despatch of Products

33. IPL will nominate the despatch location of Products the subject of Orders or Purchase Contracts.

Risk and Property

34. The risk of loss of, or damage to, the Products will pass to the Customer on despatch of the Products from the nominated despatch point, and the Customer must insure the Products from the point risk passes.
 35. Property in, and ownership of, the Products will not pass from IPL to the Customer until the whole amount payable to IPL in respect of those Products has been paid in full to IPL.
 36. If Products are damaged or destroyed before property passes to the Customer, IPL may (in addition to any other right or remedy under these Terms and Conditions) receive all insurance proceeds payable for the damaged or destroyed Products, whether or not the Price in respect of the Products has become payable under these Terms and Conditions. These Terms and Conditions are sufficient evidence of IPL's right (as against the Customer) to receive payment of the insurance proceeds without the need for further inquiry by any person dealing with IPL.
 37. If payment is not made by the Customer on the due date, the Customer must deliver the Products to IPL on demand. If the Customer does not comply with such a demand, IPL, its employees or agents may:
 - (a) enter the Customer's premises at any time to do all things necessary in order to take possession of the Products, and the Customer must procure the consent of all other persons having any interest in the premises where the Products are situated to entry of those premises by IPL, its employees or agents; and
 - (b) credit the Customer's account with the lower of the Price for the Products or the net realisable value of the Products, or re-sell the Products and apply the proceeds of sale in reduction of the outstanding balance due to IPL under these Terms and Conditions.
 38. The Customer must pay IPL any expense of repossession, transportation, storage or re-sale incurred by IPL. If IPL re-sells the Products, it must account to the Customer for any balance remaining after deduction of any costs and payment of all amounts due to IPL under these Terms and Conditions.
- #### **Property rights, interests and intellectual property of IPL**
39. The Customer acknowledges that all property rights in the Products (prior to IPL receiving payment for such Products) and in all intellectual property associated with those Products are, and will be, owned solely by IPL. The Customer must use its best endeavours to safeguard the property rights of IPL (including the Intellectual Property Rights (defined below)).
 40. The Customer must:
 - (a) immediately notify IPL of any improper use of IPL's patents, trade secrets, trade marks, logos, copyright, designs or other intellectual property rights (**Intellectual Property Rights**) which come to its notice;
 - (b) at the request of IPL, assist IPL in taking all steps to defend the property rights and the Intellectual Property Rights of IPL;
 - (c) not make any use of the property rights and Intellectual Property Rights other than as permitted by these Terms

and Conditions or in such manner and style and in such circumstances as approved by IPL;

- (d) not adapt, use or register any trade mark, trade name, trading style or corporate name which could infringe or impair or which is intended to impair the Intellectual Property Rights or any registrations thereof; and
- (e) at the written request of IPL, cease using the Intellectual Property Rights and, as soon as reasonably practicable after such request, remove all signage and branding associated with the Intellectual Property Rights from its premises and equipment.

PPSA further assurances

- 41. The Customer consents to IPL perfecting its interest in any goods provided by IPL to the Customer by registration under the PPSA and agrees to do anything reasonably requested by IPL to enable it to do so.

End-user complaints

- 42. The Customer must promptly and fully report to IPL any complaints it receives from end users concerning the Products and the Customer must cooperate with IPL in handling such complaints.

Compliance and fitness of Products

- 43. It is the Customer's responsibility to comply with all laws and requirements of any regulatory authority applicable to the Customer's business, in particular the *Privacy Act 1988* (Cth), and all those laws and regulatory requirements relating to the environment, health, safety, storage, handling and sale of Products and formulation and sale of any products using a Product supplied by IPL under these Terms and Conditions as an input (including fertiliser blends).
- 44. The Customer must comply with any processes, material safety data sheets (or similar documents), instructions or reasonable directions of IPL issued in connection with the Products.
- 45. The Customer must not use or re-sell the Products for use in an application or purpose other than those applications or purposes for which IPL recommends the Products, as set out in IPL's sales and promotional material and material safety data sheets (or similar documents).
- 46. The Customer acknowledges that it alone is responsible for determining the fitness of the Products for the purpose in which they are intended to be used (whether by the Customer or a third party).

Packaging (where applicable)

- 47. It is the Customer's responsibility to return empty returnable containers (including bulk bags, ISO tanks, bulk bins and tanktainers) to the location from which they were supplied or other location nominated by IPL. At all times bulk containers supplied by IPL will remain the property of IPL and must not be used for any commodity other than the particular IPL Product contained in the bulk containers at the time of despatch.
- 48. The period of use for bulk containers will be such reasonable time as determined by IPL, having regard to the circumstances in which the bulk containers are supplied. The Customer will pay rental charges as determined by IPL from time to time on all containers which are not returned within the time determined by IPL pursuant to this clause.
- 49. The Customer will be liable for bulk containers not returned in the same condition as they were supplied (fair wear and tear excepted), or not returned at all, and will be charged replacement value or repair cost, whichever is applicable.

Restriction on sale (IPF customers only)

- 50. A Customer must not, without IPL's written approval:
 - (a) place any Order or enter a Purchase Contract for Products; or
 - (b) sell any Products,

where it is aware, or it could reasonably be expected that it would be aware, that their customer proposes to re-sell or re-supply the Products.

Right to vary Products (IPF customers only)

- 51. IPL may, at any time vary the Products available to a Customer.

Confidentiality and Privacy

- 52. The Customer must not, except in confidence to the Customer's officers, employees or professional advisors (on a need to know basis), disclose to any other person:
 - (a) any confidential information in relation to the Products;
 - (b) any confidential information in relation to IPL's affairs or business or method of carrying on business;
 - (c) details of any agreement for the supply of Products or Services or any Purchase Contract.
- 53. The IPL privacy policy is available at www.incitepivot.com.au and contains information about how to access and correct personal information held by IPL, IPL's use of personal information and the complaints procedure. By placing an Order or, in respect of IPF Dealers, accepting a Quote Confirmation, the Customer will be deemed to consent to IPL storing, using and disclosing personal information in accordance with this policy.

PPSA Confidentiality Agreement

- 54. IPL and the Customer each agree that they will not disclose any information of the type specified in section 275(1) of the PPSA other than:
 - (a) in confidence to its officers, employees or professional advisers on a need to know basis;
 - (b) in confidence with the other's consent (such consent not to be unreasonably withheld or delayed); or
 - (c) as required by any law (other than section 275(1) of the PPSA), regulatory authority or any stock exchange.

Indemnity

- 55. The Customer must indemnify and keep indemnified IPL and each of its officers, employees and agents (for each of whom IPL holds the benefit of this indemnity upon trust) against any Loss which any such person may incur or be subjected to in respect of or arising from:
 - (a) the negligence, wrongful act or omission, breach of statutory duty or wilful default of the Customer or its officers, employees, agents or contractors;
 - (b) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the business of the Customer;
 - (c) transport, storage, blending, repackaging, re-bagging, spreading or other handling of the Products by the Customer;
 - (d) misuse of Products by the Customer;
 - (e) warranties or representations made by the Customer in relation to the Products; or
 - (f) any breach of these Terms and Conditions by the Customer.

Limitation of Liability

- 56. Except for the warranties expressly made in these Terms and Conditions, all conditions, warranties, undertakings or representations, express or implied, arising by statute, general law or otherwise are expressly excluded by IPL to the extent permitted by law.
- 57. The liability of IPL to the Customer or any third party for any Loss relating to the Products is limited (to the full extent permitted by law) to the lesser of:
 - (a) replacing the Products, the subject of the Loss; or
 - (b) the cost of replacing the Products, the subject of the Loss.

58. In the case of the provision of any Services, the liability of IPL is limited (to the full extent permitted by law) to the lesser of:
- the re-supply of the relevant Service, the subject of the Loss; or
 - the payment of the cost of supply of the relevant Service.
59. For the avoidance of doubt, clauses 57 and 58 do not relate to IPL's liability (if any) to IPF Dealers for breach of IPL's obligations to make Product available in accordance with clause 13(c). IPL's liability (if any) for such breach is limited to crediting the amount of the Supply Shortfall Fee to the Customer's account with IPL.
60. Nothing in these Terms and Conditions is intended to exclude, restrict or modify the operation of section 274 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).
61. IPL is not liable to the Customer or any third party for any exemplary, special, indirect, incidental or consequential loss or damage or any actual or prospective lost revenue or profits.

Enforcement provisions of the PPSA

62. The parties contract out of each provision of the PPSA which, under section 115(1) or 115(7) of that Act, they are permitted to contract out of.
63. Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
64. Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other Party under that section.

Force majeure

65. IPL will not be liable to the Customer for any failure to fulfil, or delay in fulfilling, in whole or in part, its obligations under these Terms and Conditions to the extent those obligations are affected by Force Majeure.

Change in control

66. The Customer must promptly notify IPL in writing of any change to the management, control or ownership of the Customer.

Set-off

67. IPL may set-off against payments due to the Customer against any amounts that the Customer owes to IPL.

Expenses incurred by Customer

68. No claims for, or deductions in respect of, expenses incurred by the Customer in the performance of its functions and duties under these Terms and Conditions will be made or allowed except with the prior consent of IPL.

Waiver

69. The failure of a party at any time to require performance of any obligation under these Terms and Conditions is not a waiver of that party's right to claim damages for breach of that obligation or at any other time, to require performance of that or any other obligation under these Terms and Conditions, unless written notice to that effect is given.

General Lien

70. In addition to any right of lien which IPL may be entitled to at law, IPL will be entitled to exercise a general lien over all items in its possession belonging to the Customer, until the Customer has paid in full for all Products and Services supplied by IPL to the Customer. After giving reasonable notice to the Customer, IPL may in its sole discretion sell any item that is subject to the lien, and after discharging in full any amounts owing to IPL, will pay any surplus proceeds to the Customer.

Governing law

71. These Terms and Conditions are governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of the Courts of Victoria.

Severance

72. Each provision of these Terms and Conditions is deemed to be separate and severable from the other provisions. To the extent any provision is invalid or unenforceable in any jurisdiction, this will not:
- invalidate the remaining provisions of these Terms and Conditions in that jurisdiction; or
 - affect the validity or enforceability of that provision in any other jurisdiction.

Notice

73. Any notice, demand, consent, approval, authorisation or other communication (**Notice**) contemplated by, or given or made under, these Terms and Conditions must be in writing and signed by a person duly authorised by the person giving the Notice. Notices must either be delivered to the intended recipient by prepaid post or by hand, fax or email to the address, fax number or email address provided by the intended recipient for that purpose.

GST and Other Taxes

74. If GST is payable on a Taxable Supply made under, by reference to or in connection with these Terms and Conditions, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive. The GST Amount must be paid at the same time and in the same manner as the GST-exclusive Consideration is otherwise to be paid or provided.
75. Any reference in the calculation of an amount for a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
76. Any reference in these Terms and Conditions to value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.
77. Any reference in these Terms and Conditions (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.
78. All stamp duty (including fines, penalties and interest) payable on or in connection with these Terms and Conditions and any instrument executed under or any transaction evidenced by these Terms and Conditions must be borne by the Customer.

Defined Terms

The following definitions apply unless the context requires otherwise:

Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Contract Period means the period of time set out in the Quote Confirmation during which the IPF Dealer and IPL must satisfy their obligations in accordance with clause 13.

Contract Volume means the volume of Product set out in the Quote Confirmation.

Consideration, GST and GST Group have the meaning given by the GST Law.

Customer means any party that acquires Products and/or Services from IPL or proposes to acquire Products and/or Services from IPL.

Despatch Volume Shortfall means, in relation to a Purchase Contract, the volume of Product (other than blends of Products) equal to:

90% of the Contract Volume

less

the volume of Product actually despatched to the IPF Dealer in the relevant Contract Period.

Force Majeure means an event or failure to act which is beyond the control of IPL and includes:

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood, plague or other epidemic;
- (c) damage to, destruction or inoperability of, breakages or accidents to plant, equipment or machinery;
- (d) act of a Government, acts of war (whether declared or not declared or a war like situation), acts of public enemies, terrorist acts, riots, civil commotions, sabotage, quarantine, restriction, explosion or embargo; and
- (e) law, order, rule, regulation, act, restraint, omission, direction or failure to act of any Authority;
- (f) inability to obtain or failure to obtain any necessary approvals, consents, permits or licences from any Authority;
- (g) any situation giving rise to an event of force majeure under a contract for:
 - (i) the purchase of the Product or an input into the manufacture of the Product by IPL or a related company of IPL; or
 - (ii) the transport of the Product or an input into the manufacture of the Product by or on behalf of IPL or a related company of IPL.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Intellectual Property Rights has the meaning given to that term in clause 40(a).

IPF Customer means any party that acquires Products and/or Services from the IPF or fertiliser business owned by IPL or proposes to acquire Products and/or Services from IPF or fertiliser business owned by IPL.

IPF Dealer means a Customer who purchases Products pursuant to the terms of a Business Partner Agreement.

Loss includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.

Non Compliance Fee is calculated as 15% of the Price multiplied by the Despatch Volume Shortfall.

Order means an order submitted by the Customer for Products at the Price.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price for Products nominated by IPL from time to time and, in relation to fertilisers, may be:

- (a) the net price listed on the Price List applicable as at the date of despatch or as otherwise notified to the Customer by IPL; or
- (b) the price set out in the Quote Confirmation or the price determined using the calculation set out in the Quote Confirmation,

including, for the avoidance of doubt, any GST Amount payable.

Price List means the price list issued by IPL from time to time for the locality in which the IPF Dealer's business is located.

Products means the IPL products.

Purchase Contract means the agreement formed between IPL and an IPF Dealer following the IPF Dealer's acceptance of the Quote Confirmation.

Purchase Order means an Order submitted by the IPF Dealer under and in accordance with a Purchase Contract.

Quote Confirmation means an offer to the Customer by IPL to make a volume of Product available to the Customer at the Price during the Contract Period.

Services means any services offered in connection with the Products, including, without limitation, those services listed on the Price List.

Supply Shortfall Fee is calculated as 15% of the Price multiplied by the Supply Volume Shortfall.

Supply Volume Shortfall means, in relation to a Purchase Contract, that volume of Product equal to:

90% of the Contract Volume

less

the volume of Product actually made available to the IPF Dealer in the relevant Contract Period.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).