

M I INTERNATIONAL PTY LTD
POOLCORP INTERNATIONAL PTY LIMITED
WHOLESALE TERMS AND CONDITIONS

Terms and Conditions

This Agreement is entered into between **M I International Pty Ltd** T/As Lo-Chlor Chemicals (ABN 57 002 869 089) and **PoolCorp International Pty Limited** (ABN 22 159 110 157) (**we, us or our**) and you, the person, organisation or entity described in the Schedule, Credit Application or Order (**you or your**), together the **Parties** and each a **Party**.

1 Acceptance and Term

- 1.1 You accept this Agreement by the earlier of:
- (a) signing and returning this Agreement to us, including by email;
 - (b) confirming that you accept this Agreement or our Invoice (whether orally or in writing (including by email) or via our website);
 - (c) instructing us (whether orally or in writing) to proceed with the provision of the Goods; and
 - (d) making part or full payment of the Price.

2 Goods

- 2.1 We will commence the provision of the Goods within a reasonable time after the later of the Commencement Date and the satisfaction of any other conditions precedent contemplated by this Agreement.
- 2.2 In consideration of your payment of the Price, we will provide the Goods in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.3 We agree to provide the Goods to you in accordance with the Exclusivity Type.
- 2.4 If this Agreement expresses a time within which the Goods are to be provided, you agree that such time is an estimate only, and creates no obligation on us to provide the Goods by that time.
- 2.5 You agree that we may amend the Goods or the Price at any time, by providing written notice to you. If you do not agree to any amendment made to the Goods or Price, you may terminate this by giving us 30 days' notice in writing, in which case, clause 13.2 will apply.
- 2.6 We may offer you Sample Goods, for the Price agreed between the Parties, to allow you to evaluate our Goods.
- 2.7 Following delivery of the Sample Goods, you may elect to issue us an Order for Goods under this Agreement, or you may terminate this Agreement by giving us 7 days' notice in writing from the date of delivery, in which case, clause 13.2 will apply.
- 2.8 This Agreement constitutes a "standing offer" under which, during the Term, you may engage us to provide the Goods under separate Orders. You may issue Orders by email or by any other process agreed between the Parties. The Parties will be required to comply with the terms of an Order once it has been accepted by us in writing.
- 2.9 Each Order is subject to, and will be governed by, this Agreement and any other conditions agreed to by the Parties in writing. To the extent there is any ambiguity, discrepancy or inconsistency in or between the terms and conditions contained in this Agreement and any Order, the terms and conditions of this Agreement will prevail.

3 Your Obligations

- 3.1 You agree to:
- (a) comply with this Agreement, our reasonable requests or requirements, and all applicable laws; and
 - (b) provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at law.
- 3.2 During the Term, and in addition to and without limiting any other obligation under this Agreement, you agree to maintain, store and use the Goods in accordance with the Manual or our reasonable instructions or directions.
- 3.3 Unless otherwise agreed in writing between the Parties, you agree to comply with all Resale Obligations.

4 Payment

- 4.1 You agree to pay us:
- (a) the Price;
 - (b) all Delivery Costs set out in our Invoice (if any); and
 - (c) any other amount payable to us under this Agreement, in accordance with the Payment Terms.
- 4.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) immediately cease providing the Goods, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.

5 Minimum Order Requirement

- 5.1 For each Order, you agree to order the Minimum Order Requirement for the Goods.
- 5.2 If you fail to order the Minimum Order Requirement for any Order, we reserve the right to charge our non-wholesale price for the Goods. If you fail to order the Minimum Order Requirement for [3] Orders or more, we will have the right to terminate this Agreement in accordance with clause 13.1(a)(1).

6 Delivery, title and risk

- 6.1 You agree to provide us (and our Personnel) with unfettered access to the Delivery Location (and the facilities at the Delivery Location), and any other premises reasonably necessary for us to provide the Goods, free from harm or risk to health or safety. Title in the Goods will pass to you on the date that you pay the Price in full in accordance with this Agreement. Risk in the Goods will pass to you when we have delivered the Goods to the Delivery Location.

7 Contractual lien and security interest

- 7.1 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under this

Agreement.

- 7.2 You agree that this Agreement and your obligations under this Agreement create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

8 Warranties

8.1 You represent, warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into this Agreement;
- (b) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (c) you have not relied on any representations or warranties made by us in relation to the Goods (including as to whether the Goods are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (d) you are not and have not been the subject of an Insolvency Event; and
- (e) if applicable, you hold a valid ABN which has been advised to us and if applicable, you are registered for GST purposes.

9 Intellectual Property

- 9.1 As between the Parties we own all Intellectual Property Rights in Our Materials and nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials.
- 9.2 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Our Materials that we provide to you, solely for the purposes for which they were developed and for your use and enjoyment of the Goods, as contemplated by this Agreement.
- 9.3 In the use of any Intellectual Property Rights in connection with this Agreement, you must not (and you must ensure that your Personnel do not) commit any intellectual property breach.

10 Defects

- 10.1 If, within 24 hours after the delivery of the Goods, you have notified us in writing of any fault, defect or error in the Goods, which is caused by a breach of this Agreement by us (Defect), along with a description of the relevant Defect, we will, at our absolute discretion and at our own cost:
- (a) remedy the Defect; or
 - (b) if we are unable to remedy the Defect, offer you a choice of a credit or a refund with respect to that part of the Price applicable to the Defect.
- 10.2 Despite anything to the contrary, to the maximum extent permitted by law, our aggregate Liability for any fault, defect, error, omission or lack of suitability or benefit with respect to the Goods will be limited to, and must not exceed, the costs we incur in complying with 10.1(a) and 10.1(b) (as applicable).

11 Exclusions to liability

- 11.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your or your Personnel's acts or omissions;
 - (b) any Third Party Inputs;
 - (c) the storage of any undelivered Goods, including any Liability for any loss, damage, spoilage or theft of or to those stored Goods;
 - (d) the Goods being unavailable, or any delay in us providing the Goods to you, for whatever reason; and/or
 - (e) any event outside of our reasonable control.

12 Limitations on liability

- 12.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) we will not be liable for Consequential Loss;
 - (b) our liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of you (or any of your Personnel); and
 - (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Goods to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates.

13 Termination

13.1 This Agreement will terminate immediately upon written notice by:

- (a) us, if:
 - (i) you (or any of your Personnel) breach any provision of this Agreement and that breach has not been remedied within 10 Business Days of being notified by us;
 - (ii) you fail to provide us with clear or timely instructions or information to enable us to provide the Goods;
 - (iii) for any other reason outside our control which has the effect of compromising our ability to provide the Goods; or
 - (iv) you are unable to pay your debts as they fall due; and
- (b) you, if we:
 - (i) are in breach of a material term of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by you; or
 - (ii) are unable to pay our debts as they fall due.

13.2 Upon expiry or termination of this Agreement:

- (a) we will immediately cease providing the Goods;
- (b) you are to pay for all Goods provided prior to termination, including Goods which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
- (c) pursuant to clauses 13.1(a)(i), 13.1(a)(ii) or 13.1(a)(iv), you also agree to pay us our additional costs arising from, or in connection with, such termination; and
- (d) you agree to grant us such rights of access to any premises where the Goods are located to allow us (or our Personnel) to immediately recover or repossess any Goods belonging to us.

13.3 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

14 General

- 14.1 **Assignment:** You must not assign or deal with the whole or any part of your rights or obligations under this Agreement without our prior written consent (such consent is not to be unreasonably withheld).
- 14.2 **Confidentiality:** Both Parties will (and will ensure its Personnel) keep confidential, and not use or permit any use of, any confidential information without the other Party's prior written consent, except where the disclosure is required by law.
- 14.3 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (Dispute) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute (unless that Party is seeking urgent interlocutory relief, or the Dispute relates to compliance with this clause).
- 14.4 **Entire agreement:** This Agreement contains the entire understanding between the Parties in respect of its subject matter.
- 14.5 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control.
- 14.6 **Governing law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 14.7 **GST:** If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply.
- 14.8 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.9 **Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Goods to you, including on our website or in our promotional material.
- 14.10 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.
- 14.11 **Survival:** Clauses 4.2, 9, 10.2, 11, 12, 13, 14 and 15 survive termination or expiry of this Agreement.

15 Definitions

- 15.1 In this Agreement, unless the context otherwise requires, terms have the meanings given to them in the Schedule, and:

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date this Agreement is accepted in accordance with its terms.

Consequential Loss includes any consequential loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

Delivery Costs means the costs associated with the delivery or provision of the Goods, including any insurance, customs, tariffs, duties or other such charges that may apply to the Goods, as set out in the Invoice.

Insolvency Event means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

Intellectual Property means any copyright, registered or unregistered design, patent or trade mark rights, domain names; know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not. Including in respect of Intellectual Property.

Invoice means an invoice for your payment of the Goods purchased under this Agreement, which includes details of the Goods, the Price and any relevant Delivery Costs.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Order means an order for Goods as set out under this Agreement.

Our Materials means all work, models, processes, technologies, strategies, materials, information, documentation, services and Intellectual Property that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

Manual means the manual we provide you that set outs information about the Goods and how to use them.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Resale Obligations means those resale obligations set out in the Schedule.

Schedule means the schedule to this Agreement.

Third Party Inputs means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Goods may be contingent on, or impacted