

## GENERAL TERMS AND CONDITIONS OF SALE

(1) **APPLICATION:** These General Terms and Conditions of Sale ("Terms and Conditions") apply to and are incorporated into and made part of the Sales Confirmation, Sales Agreement, Supply Agreement or similarly titled document, as the case may be, issued by Seller and relating to the sale of goods (the "sales agreement"; such sales agreement, including these Terms and Conditions, the "Agreement"). The words "hereof", "herein", "hereunder" and "herewith", and words of similar import, when used in these Terms and Conditions, refer to the Agreement as a whole, and not just to these Terms and Conditions. Seller does not agree to any provision additional to or different from the terms hereof that may appear in Buyer's acknowledgement, order, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in writing signed by Seller. Buyer's commencement of performance hereunder shall in all cases constitute Buyer's unqualified and unconditional acceptance of the terms and conditions of the Agreement. Subject to Sections 6 and 8, in the event of a conflict between these Terms and Conditions and the specific provisions contained in the sales agreement, the specific provisions contained in the sales agreement shall prevail. Terms not defined herein shall have the meanings set forth in the sales agreement. For the avoidance of doubt, all Sections are subject to, and do not operate to exclude, restrict or modify, any Non-Excludable Rights set out in Section 8.

(2) **DELIVERIES:** If the sale hereunder contemplates multiple deliveries, Buyer shall give Seller at least one (1) business day notice prior to delivery as to the quantity and scheduling of deliveries and shall be subject to available time slots. Any failure by Buyer to provide such notice of a delivery schedule or to take delivery of any scheduled shipment of Product hereunder shall entitle Seller, at its sole option, and in addition to any other rights or remedies to which Seller may be entitled at law or in equity, to terminate the remaining portion of the Agreement.

(3) **TERMS OF PAYMENT:** (a) All payments must be made in the currency listed in the sales agreement, or, if not so listed, then in Australian dollars. (b) If the payment due date is a non-business day, Seller must receive such payment on the next business day after such due date. (c) In the event that Buyer fails to specify the type of balance (i.e. currently due amounts, past due amounts or interest) to which any payment shall be applied, then any such payment shall be applied to any amount that Buyer owes Seller as Seller sees fit in its sole discretion. (d) Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the lesser of (i) 18% per annum and (ii) the maximum rate permitted by applicable law, from the payment due date until paid in full.

(4) **GOODS AND SERVICES TAX:** (a) Words or expressions used in this Section 4 have the same meaning as they have under *A New Tax System (Goods and Services) Tax Act 1999* (Cth). (b) Unless otherwise specified in the sales agreement, the amount payable for Product does not include any amount for GST. (c) If the supply of Product is subject to GST, the Buyer must pay to Seller an additional amount equal to the amount payable but for the application of this Section multiplied by the applicable GST rate ("GST Amount"). (d) The GST Amount is payable at the same time as the consideration for Product is payable. (e) If an adjustment event arises in respect of a taxable supply of Product, the GST Amount must be adjusted to reflect the adjustment event and Buyer or Seller (as the case may be) must make any payments to each other necessary to reflect the adjustment within 5 business days of an adjustment note in respect of the adjustment event being issued. (f) If a payment to a party pursuant to the Agreement is a reimbursement or indemnification or otherwise calculated by reference to a loss, cost or expense incurred by that party, the amount to be reimbursed or indemnified will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that party is a member of (as the case may be), is entitled in respect of that loss, cost or expense.

(5) **SET-OFF:** Seller reserves the right, at any time, to Set-off against any amount that Seller (or any of its Affiliates) owes to Buyer (or any of its Affiliates) amounts due to Seller (or any of its Affiliates) under the Agreement or any other agreement between or among any such parties. This does not affect the right of Seller to recover from Buyer the whole of the debt of any balance that remains owing after any Set-off. For the purpose of Sections 5 and 9, "Set-off" means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar right to which Seller is entitled (whether arising under the Agreement, another agreement, applicable law, or otherwise) that is exercised by Seller. "Affiliate" means a related body corporate as defined in Sections 9 and 50 of the *Corporations Act 2001* (Cth).

(6) **CREDIT TERMS:** Notwithstanding any provision to the contrary in the sales agreement, in the event that Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may (i) suspend deliveries of Product, (ii) require prepayment by real-time-gross-settlement electronic transfer at least 2 business days prior to a scheduled shipment of Product, and/or (iii) require Performance Assurance at least 3 business days after Seller's request covering all outstanding amounts owed and any future shipments of Product. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of either cash or letter(s) of credit in a form and from a bank acceptable to Seller in its sole discretion.

(7) **INSPECTION/COMPLAINTS:** Buyer shall, at its sole cost and expense, inspect the Product immediately after delivery. Buyer's failure to give written notice to Seller of any claim for Product not conforming to the Agreement within 3 business days from the date of delivery and prior to any use, disposition, mixing, processing or other change from the original condition of the Product shall constitute an unqualified acceptance of the Product and a waiver by Buyer of all claims to the extent permitted by law. All rejected Product shall be held for inspection. Demurrage shall be for Buyer's account to the extent the Product does conform.

(8) **EXCLUSIONS AND LIMITATIONS:** (a) As its only express warranties, Seller warrants to Buyer only that, at the earlier of the time (a) title to the Product passes to Buyer and (b) risk of loss of the Product passes to Buyer: (i) the Product shall conform to the specifications specifically set forth or referred to in the sales agreement; and (ii) title to the Product shall be free from any security interest, lien, or encumbrance ("Express Warranties"), except as set out in these Terms and Conditions.

(b) Subject to the Express Warranties and any rights which cannot be limited or excluded by law, including any applicable consumer guarantees granted by the Competition and Consumer Act 2010 (Cth) ("Non-Excludable Rights"), all conditions, warranties, guarantees, rights, remedies, liabilities, representations (whether express, implied, statutory or otherwise) or other terms that may be implied by custom, under the general law or by statute, including as to the quality or fitness of the goods or as to the accuracy of information, advice or other services concerning the goods, are expressly excluded under the Agreement.

(c) Except in relation to the Non-Excludable Rights, Seller's liability to Buyer arising directly or indirectly under or in connection with the Agreement or the performance or non-performance under the Agreement and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

(i) Seller will have no liability whatsoever to Buyer for any loss, harm, damage, cost, or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage (including economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and

(ii) the aggregate of Seller's liability to Buyer is otherwise limited to an amount not exceeding the consideration for the Products paid by Buyer in accordance with the Agreement.

(d) Seller's liability to Buyer for failure to comply with any Express Warranty or Non-Excludable Right is limited, at Seller's option, to the cost of replacing the Products, or supplying equivalent Products. Buyer acknowledges and agrees that the remedies in this clause are the sole remedies for a breach of any Express Warranty or Non-Excludable Right, and it is fair and reasonable for Seller to rely upon this clause.

(e) Buyer agrees that (i) the Product is not of a kind ordinarily acquired for personal, domestic or household use or consumption; and (ii) Buyer is acquiring the Product for resupply or for using it up or transforming it in the course of a process of production or manufacture in Buyer's business.

(9) **DEFAULT:** Upon the occurrence of any of the following events: (a) Seller not having received a payment due from Buyer by the date such payment is due under the Agreement, and such failure remains uncured for a period of 2 days; (b) Buyer fails to perform or breaches any other obligation or term in the Agreement and such failure or

breach is not excused or cured within three (3) business days after written notice of the failure or breach is delivered to Buyer; (c) an Insolvency Event occurs; (d) Buyer fails to timely provide prepayment or Performance Assurance as set forth in Section 6 above; or (e) any Performance Assurance provider for Buyer fails to perform any obligation of such Performance Assurance provider under any document executed and delivered in connection herewith, then Seller, in its sole discretion and without prior notice to Buyer, may do any one or more of the following: (w) suspend performance under the Agreement or any other agreement between Buyer and Seller; (x) terminate the Agreement or any other agreement between Buyer and Seller, whereby any and all obligations of Buyer, including payments or deliveries due, will, at the option of Seller, become immediately due and payable or deliverable, as applicable; (y) charge storage fees; and/or (z) Set-off any amount that Seller (or any of its Affiliates) owes to Buyer (or any of its Affiliates) against any amount that Buyer (or any of its Affiliates) owes to Seller (or any of its Affiliates) under the Agreement or any other agreement between or among any such parties. If Seller suspends performance and withholds delivery of the Product as permitted above, it may sell the Product to a third party and deduct from the proceeds of such sale the purchase price and all reasonable costs resulting from Buyer's default as identified above, including all costs associated with the transportation (including demurrage and other vessel or shipping related charges, if applicable), storage, and sale of the Product. The foregoing rights, which shall include specific performance, shall be cumulative and alternative and in addition to any other rights or remedies to which Seller may be entitled at law or in equity. In addition, Seller shall be entitled to recover from Buyer all court costs, legal fees and expenses (on a solicitor-client basis) incurred by Seller in connection with Buyer's default, and interest on past due amounts as set forth in Section 3 above. "Insolvency Event" means in respect of Buyer or any Performance Assurance provider for Buyer, it is the subject of or an order is made for a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an administrator, controller or managing controller, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity is appointed to it or any of its assets, or an analogous or equivalent event or proceeding in any jurisdiction or where Buyer makes an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them or Buyer becomes insolvent, or presumed by a court to be insolvent, or stops or suspends payment to creditors generally or is taken to be unable to pay its debts as and when they fall due.

(10) **FORCE MAJEURE:** (a) Force Majeure. If, because of Force Majeure, Seller is unable to carry out any of its obligations hereunder, then the obligations of Seller shall be suspended to the extent made necessary by and during such Force Majeure's continuance. The term "Force Majeure", as used herein, means any cause not reasonably within the control of Seller, and shall include the following: (i) physical events such as acts of God, disease, plague, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes or cyclones, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting a geographic region, such as (but not limited to) low temperatures which cause freezing or failure of equipment or lines of pipe; (iii) interruption and/or curtailment of transportation and/or storage; (iv) acts of others such as terrorist attacks, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; (v) interference with or disruption of Seller's intended source of supply of the Product (or any component thereof) to be sold hereunder or interference with or disruption of Seller's intended means of transportation for the delivery of such Product (or any component thereof); (vi) compliance with any law, statute, ordinance, regulation, policy, order or request of any commonwealth, federal, state, provincial or local government unit, or any officer, department, agency, or committee thereof (except to the extent such order or request arises from Seller's failure to comply with applicable law); and (vii) any other event or contingencies of like or different character beyond the reasonable control of Seller, that, in each case, interferes with the ability of Seller to perform its obligations hereunder.

(b) Notice. If Seller's performance is prevented by Force Majeure, it will provide notice to Buyer. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Delay or failure to give notice herein shall not prevent Seller from claiming its performance is excused by Force Majeure, unless and to the extent that such delay or failure has adversely affected Buyer.

(c) Consequences. Upon providing notice of Force Majeure to Buyer, Seller will be relieved of its obligation, from the onset of the Force Majeure event, to make delivery of Product to the extent and for the duration of Force Majeure, and shall not be deemed to have failed in such obligations to Buyer during such occurrence or event. For the duration of the Force Majeure, Seller may, in its sole discretion, (i) allocate its available supply of Product among Seller's existing or prospective customers (including Seller's Affiliates) and deliver to Buyer only its allocation of such Product or (ii) terminate the Agreement if Force Majeure lasts for more than 15 consecutive days or 20 days in any 30 day period. Under no circumstance shall Seller be obligated to cure any deficiencies in deliveries of Product caused by Force Majeure.

(11) **INDEMNITY:** To the fullest extent permitted by law, Buyer shall defend, protect, indemnify, and save Seller, its Affiliates, and their respective officers, directors, and employees (collectively, "Indemnitees") harmless from and against all claims, demands, lawsuits, causes of action, strict liability claims, penalties, fines, administrative law actions and orders, expenses (including legal fees and expenses (on a solicitor-client basis)) and costs, losses and liabilities of every kind and character due for any reason whatsoever, including personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to Buyer, Indemnitees, the employees, directors or officers of either or any other person, arising out of or in any way incident to: (a) possession, use, misuse, storage, transportation, handling or disposal of Product (at or after the time risk of loss of the Product passes to Buyer) or any product into which the Product may be incorporated; (b) the import, export, marketing, sale, re-sale or distribution of the Product (or any product into which the Product may be incorporated) or the use or misuse of any patent, trademark, copyright or other property right by or on behalf of Buyer, or Buyer's agent, subcontractor or subsequent purchaser, or any of their employees; (c) use or misuse of rail cars, motor vehicles, inland or ocean going water craft or pipeline facilities; and/or (d) breach of any of the terms of the Agreement or any law. Buyer's duty of indemnification shall survive the termination of the Agreement or the cessation of business transactions between Buyer and Seller, and Buyer's obligations herein shall remain in full force and effect as necessary for the purposes of compliance with the terms of such indemnity. In addition, the indemnity in this Section 11 shall be in addition to any indemnity from Buyer or its contractors contained in another agreement between Seller and such party. Seller holds the benefit of this Section 11 on trust for and on behalf of the Indemnitees who are not a party to the Agreement.

(12) **GOVERNING LAW:** The Agreement and its execution, performance, interpretation, construction and enforcement shall be governed by the law of Victoria, Australia, without regard to its conflicts of law rules. All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Melbourne, Victoria, Australia. The language to be used in the arbitral proceedings shall be English. Buyer and Seller agree that the International Arbitration Act 1974 (Cth), as amended and in force at the time of any enforcement action shall apply to the Agreement.

(13) **ASSIGNMENT:** The rights and obligations under the Agreement are not assignable or transferable by Buyer, in whole or in part, by operation of law or otherwise, without the express written consent of Seller that may be granted or withheld in its sole discretion. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of the Agreement and shall permit Seller, in addition to any other rights which it may have, to terminate the Agreement.

(14) **NOTICE:** All notices, consents, communications or transmittals under the Agreement shall be in writing and shall take effect when taken to be received, and is taken to be received: (a) if personally hand delivered, on delivery; or (b) if sent by facsimile or electronic transmission (when the sender's facsimile or electronic transmission system generates a message confirming successful transmission of the entire Notice; or (c) if posted, on the second business day after the date of posting (or on the seventh business day after the date of posting if posted to or from a place outside Australia)

(15) **TAXES:** Buyer shall pay all taxes, duties, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") which may now or hereafter be imposed on or with respect to the Product at or after title and risk of loss passes to Buyer. If Seller is required to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall reimburse Seller for such Taxes within 10 days of receipt of written notice hereunder.

(16) **ENTIRE AGREEMENT; AMENDMENT; WAIVERS:** The Agreement supersedes all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. No amendment, modification or release of any provisions hereof shall be effective against Seller unless the same is in writing and such writing: (a) specifically refers to the Agreement; (b) specifically identifies the term amended; and (c) is

signed or issued by a duly authorised representative of Seller. No waiver by Seller of any breach of any terms, conditions or obligations under the Agreement shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.

(17) **ACCESS TO FACILITIES:** (a) If and to the extent that the Product sold hereunder is to be delivered from any Seller facility, Seller shall have the right to require the execution of an Access Agreement prior to granting Buyer, its contractors, or its agents access to such facility. Buyer agrees that it, and its contractors and agents, will comply with all of Seller's safety rules and regulations when they are at Seller's facility in connection with the performance of the Agreement.

(b) If and to the extent that the Product sold hereunder is delivered to Buyer and Buyer does not pay in full in accordance with the terms of the Agreement, Seller shall have the right to access Buyer's facilities to collect such Product.

(18) **EQUIPMENT/UNSAFE CONDITIONS:** Seller may reject any trucks, transports, containers or storage presented for loading/unloading/transfer of Product, which may present, in its sole discretion, an unsafe or potentially unsafe situation. Seller may refuse to unload, transfer or handle any Product under any conditions which it deems, in its sole discretion, unsafe or potentially unsafe, including any conditions caused by Product, drivers, personnel, equipment, procedures and/or adverse weather conditions.

(19) **HAZARDOUS PRODUCTS AND OTHER LAWS:** If and to the extent Buyer (or its agent or contractor) handles, stores or transports any substance (including any substance which is or may be dangerous, hazardous, toxic or polluting), Buyer hereby warrants that it will only do so in compliance with all applicable laws, rules, regulations, orders, and other requirements of commonwealth federal, provincial, state and local governments and agencies thereof, regarding the handling and transportation of substances.

(20) **INTERNATIONAL TRANSACTIONS:** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the transactions under the Agreement. If specifically noted in the sales agreement, the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference, except to the extent that any such provisions are contrary to or inconsistent with any of the terms of the Agreement.

(21) **ELECTRONIC TRANSACTIONS:** Subject to the Electronic Transactions Act 1999 (Cth), the Agreement may be digitally copied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.

(22) **COMPLIANCE:** Buyer shall (a) comply fully with all applicable laws and regulations in its performance of the Agreement and in its import, export, manufacture, use, sale, re-sale, marketing, promotion, storage, transportation, handling and disposal of the Product (or any product into which the Product may be incorporated), including those related to product labeling and packaging, occupational safety, hazardous products and hazardous materials (as applicable), and health and protection of the environment, and (b) neither take nor refrain from taking any action that could result in liability for either Buyer or Seller under applicable law, including the *Criminal Code (Cth) – Chapter 4, div 70, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, any standards or regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control or the U.S. Commerce Department's Bureau of Industry and Security relating to trade sanctions (including, without limitation 31 C. F. R. Chapter V and 15 C.F.R. Parts 730 et. seq.), Section 999 of the U.S. Internal Revenue Code or implementing rules and regulations of the foregoing or of the Australian Transaction Reports and Analysis Centre (AUSTRAC) or any other relevant government body or authority. Buyer's breach of the preceding sentence shall constitute cause for immediate termination of the Agreement. Neither Buyer nor Seller shall be required to take or refrain from taking any action impermissible or penalised under any applicable laws. If reasonably required by Seller to enable it to comply with applicable laws, Buyer must: (a) establish and maintain appropriate induction training for its employees, contractors and agents to satisfy the requirements of laws, and maintain adequate records to confirm its compliance with those laws; and (b) adhere to a reasonably appropriate and applicable industry code of practice or equivalent. Buyer must permit Seller to audit or otherwise verify Buyer's compliance with these requirements.

(23) **INDEPENDENT CONTRACTORS:** Seller and Buyer are independent contractors only and are not partners, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Agreement or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Agreement or otherwise at law.

(24) **NO THIRD PARTY BENEFICIARIES:** The Agreement is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and, except for Section 11, shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

(25) **SEVERABILITY:** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of its other provisions.

(26) **CONFIDENTIALITY AND PRIVACY:** (a) Except as may be agreed to in writing by Seller, or as may be necessary to perform its obligations herein, Buyer shall maintain in confidence all information concerning costs and price to be disclosed in connection with the Agreement. Unless disclosure is required by law, in which event Buyer shall give Seller prompt notice of such requirement and cooperate with Seller in obtaining confidential treatment of same, Buyer shall not disclose such information other than to its employees with a need to know such information in connection with performance under the Agreement, and such employees shall be advised of the confidential nature of such information. Buyer shall take all proper precautions to prevent such information from being acquired by any unauthorized person.

(b) Buyer consents to collection, use and disclosure of information about Buyer in accordance with Seller's Privacy Policy (available at [http://www.kochind.com/privacy\\_policy.aspx](http://www.kochind.com/privacy_policy.aspx)) which is incorporated as part of this Agreement. without limiting any consent contained in the Privacy Policy, Buyer consents to Seller disclosing Buyer's information to entities located outside Australia on the basis that Seller is not required to take reasonable steps to ensure that any overseas recipient complies with Australian privacy laws in relation to Seller's information. Buyer agrees that before providing any personal information about any other person to Seller, Buyer will ensure that the person to whom the information relates is made aware of the Privacy Policy and gives the same consents as Buyer under this clause. If any person does not provide consent on such terms, Buyer will inform Seller at or before the time that the information is provided.

(27) **LABELS AND WARNINGS:** Buyer acknowledges that, with respect to any Product sold to Buyer in bulk, Buyer shall be responsible for the printing and application of all labels and warnings (and providing any related notifications) as may be required by applicable law in connection with Buyer's sale or re-sale of the Product. Buyer shall not sell or re-sell any Product, whether sold to Buyer in bulk or otherwise, without all labels and warnings that may be required by applicable law.

(28) **MISCELLANEOUS:** The captions and Section headings set forth in the Agreement are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in the Agreement. The term "days", as used herein, shall mean actual days occurring, including, Saturdays, Sundays and public holidays in the city where Seller's registered office is located. The term "business days" shall mean days other than Saturdays, Sundays and public holidays in the city where Seller's registered office is located. The term "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicate otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require.