

SABIC Innovative Plastics - Terms and Conditions of Sale

Australia

"You" in this agreement means you and the company, business or other entity you represent. "We" "us" or "SABIC Innovative Plastics" means SABIC Australia Pty Ltd or an affiliate of this company. By placing an order for Products, accepting delivery of Products, making any payment or complying with these terms and conditions of sale ("Conditions of Sale"), you confirm that these Conditions of Sale apply to your purchase. We are entitled to vary these Conditions of Sale at any time by giving you written notice. In these Conditions of Sale "Products" means SABIC Innovative Plastics products, SABIC Innovative Plastics branded products and ancillary items sold by SABIC Innovative Plastics and may include any services performed by SABIC Innovative Plastics.

1) TERMS AND CONDITIONS OF SALE

1.1 Any Products you purchase from us are sold subject to the following:

a) If you already have a signed agreement with us for the sale and purchase of Products ("Sales Agreement"), then any term in that agreement that conflicts with these Conditions of Sale will prevail and will be applied to your purchase; the rest of these Conditions of Sale will otherwise apply.

b) If you do not have a Sales Agreement with us, then these Conditions of Sale will form the complete agreement between us, for the sale and purchase of Products. The United Nations Convention on the International Sale of Goods will not apply.

1.2 Unless otherwise agreed expressly in writing by us, all Products are provided solely for use or consumption by you, and any resale or similar transfer of such material is prohibited.

2) OFFER AND ACCEPTANCE

2.1 You acknowledge that each order incorporates these Conditions of Sale and is an irrevocable offer, subject to acceptance by us. We may decline to accept an order in whole or in part in our absolute discretion. A binding contract for the sale of Products is formed when we acknowledge in writing or otherwise, acceptance of an order ("Contract").

2.2 If we give you a quotation, we are not making you an offer. If we do not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for 30 days from the date the quotation was given.

3) PRICE

3.1 Product prices are determined by the order confirmation you receive from us, or in the absence of such confirmation, by our price list current at the time of shipment of the Products. Unless otherwise stated, prices will be exclusive of GST and will include delivery free into your store in each Australian capital city on a standard delivery basis. You must pay for delivery beyond this. Unless otherwise provided by law, you must pay to us all taxes, excises or other charges (other than taxes on our net income) that are based upon or measured by the sale, transportation, delivery or use of the Products.

4) **PAYMENT**

4.1 Unless we otherwise agree in writing, you must pay us for the Products you buy upon delivery or, for account customers, within 30 days of the end of the invoice month.

4.2 If, at any time, we, consider in our discretion that your credit is unsatisfactory or in any way impaired, we may, among other remedies, terminate the Contract concerned and suspend further deliveries, or require payment in advance, on delivery or otherwise as specified by us.

4.3 You must pay interest on overdue amounts calculated daily at the maximum overdraft rate charged by our bankers.

4.4 You agree that any claim regarding overpayment must be asserted within one year from the date the Products concerned were invoiced to you. All claims not asserted within such one-year period are irrevocably waived.

4.5 You must pay all expenses incurred by us in enforcing our rights under this document.

5) **CANCELLATION**

5.1 You cannot cancel any order or contract or return any Products unless we first agree in writing. We may not agree to any cancellation or return unless you indemnify us for all reasonable loss or damage we suffer or incur as a result of the cancellation or return. We may cancel any order or contract if we consider we may be unable to supply you the Products. We will notify you of any such cancellation as soon as reasonably practicable after receipt of your order.

5.2 You have no claim against us and we are not liable to you for any loss, liability, cost or expense, which you may incur as a result of a cancellation under this clause.

6) **DELIVERY**

6.1 Any delivery time we give you is only an estimate. We cannot guarantee delivery on a specific date. We are not liable to you for any loss or damage you suffer or incur as a result of our late delivery. You must still accept and pay for the Products even if we deliver late.

6.2 We may deliver the Products in instalments. Each instalment must be treated as a sale under a separate contract. If you do not pay for an instalment, we may treat the non-payment as a breach of contract relating to the other instalments.

6.3 If we arrange transportation for you, and there is a general increase in freight costs, a ruling or regulation affecting transportation that results in increased freight costs, or an extraordinary transportation cost which is charged to us, including, but not limited to, fuel surcharges, we may, in our sole discretion, include all those costs on your next invoice following the charge and they are payable accordingly. Delivery occurs when we notify you that Products are ready for collection from our premises or, if we have arranged transit at your request, when the Products leave our warehouse to be delivered to you.

6.4 If Products remain uncollected after 14 days from when we tell you that the Products are ready for collection, we may deliver to you and invoice you for the whole or part of an order and/or Contract without giving you notice. If we deliver the Products in these circumstances, you must pay us for any loss, liability, cost or expense we incur as a result of the cancellation.

7) **QUANTITY DISCREPANCY**

7.1 On any individual Contract for Products, we may deliver to and invoice you for a quantity of Products, which may vary up to 10% over or under the quantity specified on our order confirmation. Claims for proof of delivery must be made within 15 days from the scheduled delivery date.

7.2 You must report shortages or errors in quantity of Products in writing, within 48 hours after delivery. If not, you will be deemed to have accepted the Products in the quantity provided.

8) **RISK**

8.1 Risk of damage to, or loss of, the Products passes to you at the time delivery occurs.

8.2 We are not liable for any loss or damage or deterioration of the Products after delivery even if transport is arranged by us.

9) **TITLE**

9.1 We retain title to and ownership of the Products until you have paid all monies you owe us in respect of the Products ("Amount Due") and cleared funds on all cheques or negotiable instruments have been received by us (the date these funds are received is the "Relevant Date"). Until the Relevant Date, the Products are held by you for us as Bailee. We retain ownership of any reusable packaging and pallets.

9.2 If you fail to pay an Amount Due when it is due and payable or you become or, in our reasonable opinion, are in danger of becoming, insolvent or bankrupt, we may retake possession of the Products by entering your premises (or any other place where the Products are located) without liability for trespass or otherwise. If we retake possession of the Products, we may sell or otherwise dispose of the Products at our absolute discretion and we may set-off any amount paid to us for the Products against the Amount Due.

9.3 Until such time as title passes to you, you must ensure that the Products are readily identifiable as belonging to us (by separate storage or other means) and will deal with the Products as directed by us.

9.4 Notwithstanding any provision in these Conditions of Sale, we are entitled to maintain an action against you to recover any losses we incur in retaking possession of the Products or recovering any Amount Due, or balance thereof.

10) **TECHNICAL ADVICE AND OTHER SERVICES**

10.1 You are responsible for the design, processing, testing and labelling of any Product that you make using Products you buy from us. You will test and investigate Products sold by us so as to enable you to form an independent judgment concerning their suitability for the use, conversion or processing intended by you.

11) **WARRANTIES AND INDEMNITIES**

11.1 To the extent permitted by law, these Conditions of Sale exclude all warranties, conditions, liabilities or representations in relation to the Products or the correctness of information, advice or other services concerning the Products or otherwise.

11.2 To the extent permitted by law, the liability of us and our officers, employees or agents for a breach of any condition or warranty that the law says is implied into, and cannot be excluded from, a contract is limited, at our option, to any one or more of the following:

- a) The replacement (from any source) of those Products or the supply of equivalent Products;
- b) The payment of the costs of replacing those Products or of acquiring equivalent goods, by credit to your account, in cash or by cheque at our absolute discretion; or
- c) Repayment of any part of the purchase price of those Products that has been paid by you, by credit to your account, in cash or by cheque, at our absolute discretion.

11.3 Except to the extent set out in clause 11.2, we and our officers, employees or agents are not liable for any loss or claim of any kind whatsoever, including, without limitation, consequential or economic loss or loss of profits, even if due to the negligence of us, our officers, employees or agents arising out of or in connection with the supply of Products (and any information, data, advice or other services provided in relation to the Products). This exclusion extends to any promotional activities, advertising, statements about the Products or their performance or characteristics of or by you.

11.4 You indemnify us for all liabilities, losses, damages, costs or expenses suffered or incurred by us as a result of any of the following:

- a) Our compliance with your instructions regarding the Products;
 - (i) Your failure to:
 - (ii) Provide or display safety information on or relating to the Products;
 - (iii) Comply with laws relating to the use, sale, marketing, labelling or marking of Products; or
- b) Detect and bring to our attention matters for which we may become liable, whether for negligence, under legislation or otherwise;
- c) Any statement you make about the Products without our written approval;
- d) The use of Products by you or a third party;
- e) Your negligence, breach of duty or breach of these Conditions of Sale.

12) ENVIRONMENTAL AND HEALTH COMPLIANCE

12.1 We will give you Material Safety Data Sheets (MSDSs) and you will provide the MSDSs to all those required by law to receive them. In particular, and without limitation, you will communicate relevant safety and health information and warnings to your employees, agents, contractors and customers, and will require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handles such products. You will take such precautions as may be appropriate for hazards identified in the MSDSs and properly manage and dispose of all wastes and residues resulting from your use of the products in accordance with applicable laws and regulations. You agree to dispose of disposable packaging as required by any applicable disposal or recycling laws.

13) EXPORT CONTROL COMPLIANCE

13.1 You will ensure that Products, technology or software that you receive from us are exported by you only in compliance with applicable laws, including, without limitation, US and Australia export control laws and regulations. You will not use or knowingly support the use by others of such Products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons or ballistic missiles.

14) **MEDICAL APPLICATION**

14.1 You understand that our Products are not intended for use in any medical application involving permanent implantation in the human body, or any such implantation lasting longer than 29 days. You agree not to use any of our Products for any such application, or for any other application into which, to your knowledge, we have previously declined to sell Products.

15) **FORCE MAJEURE**

15.1 We are not liable for failure to comply with these Conditions of Sale or delay in the performance of all or any part of any Contract caused by acts of God and nature, intervention of government, war or threat of war, acts of terrorism, conditions similar to war, sanctions, blockades, embargoes, strikes, lockouts or any other causes or circumstances beyond our reasonable control ("Force Majeure Events"). We will use commercially reasonable efforts to give you notice whenever such Force Majeure Event occurs or becomes reasonably foreseeable. We do not have to remedy or resolve such Force Majeure Events.

15.2 If there is a shortage of materials we use to make the Products (whether because of price increases or otherwise) or in the event of a Force Majeure Event, we may delay or cancel delivery of the Products, reduce the quantity to be delivered and/or allocate our Products amongst our buyers of those Products (including you), in our sole discretion. You excuse us from any and all liability resulting from such shortages or such allocation decision.

16) **INFORMATION AND INTELLECTUAL PROPERTY**

16.1 You warrant that any design or instruction given to us will not infringe any third party rights and that by completing the order for Products we will not infringe any third party intellectual property rights. We may rely on all information given to us by you in supplying Products to you and we are not to be responsible if any information is incorrect or misleading.

16.2 By buying the Products you do not gain any licence or right under any of our intellectual property such as a patent, registered design, trademark or copyright or confidential information. You must not use any trademarks owned or controlled by us, or any of our affiliates in any advertising, publicity or promotion of your company, business or products without our prior consent in each case.

17) **WAIVER**

17.1 No change, modification or waiver of any provision of these Conditions of Sale shall be valid or binding unless accepted by us. A waiver by either party of any breach or failure to enforce any term or condition of these Conditions of Sale will not in any way affect, limit or waive such party's right at any time to enforce strict compliance with that or any other term or condition of these Conditions of Sale.

18) **SEVERABILITY**

18.1 If any term is determined to be invalid or unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision shall be deleted or modified, at the election of the parties, but only to the extent necessary to comply with such

ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of these Conditions of Sale and the contract shall remain in full force and effect.

19) **GOVERNING LAW AND JURISDICTION**

19.1 These Conditions of Sale and any Contract are governed by the law in force in the State of Victoria, Australia. We both submit to the non-exclusive jurisdiction of the courts of Victoria and any courts, which may hear appeals from those courts.

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