

Terms and Conditions
Recochem Inc A.R.B.N 69 00 485 999

1809 Lytton Road, Lytton Queensland 4178

These Terms and Conditions apply to the sale of Goods to the Customer by Recochem.

1. Definitions

- 1.1 **Application** means the application for credit completed and signed by the Customer and accepted by Recochem including the terms of any guarantee;
- 1.2 **CCA** means the *Competition and Consumer Act 2010* (Cth) as amended;
- 1.3 **Consequential Loss** means loss of expected savings, lost sales, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence, statute or otherwise);
- 1.4 **Credit Limit** means the credit limit for any account of the Customer approved by Recochem;
- 1.5 **Customer** means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any Application or other form provided by Recochem to the Customer together with their successors and assigns;
- 1.6 **Dangerous Goods Laws** means the laws for the manufacture, packaging, transport, delivery, storage and sale of dangerous goods;
- 1.7 **Delivery Date** means the estimated date of shipment or delivery of the Goods as specified in the Order Confirmation;
- 1.8 **Deposit** means the portion of the Price specified in the Order Confirmation payable by the Customer prior to dispatch of the Goods for delivery;
- 1.9 **Goods** mean all goods supplied by Recochem to the Customer from time to time and are as described on any order, invoices, quotation or any other forms as provided by Recochem to the Customer;
- 1.10 **Guarantor** means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis as set out in the Application;
- 1.11 **Loss** means any loss, expense, cost, liability or damage of any kind and includes Consequential Loss and any fine or penalty imposed by a statutory or other authority and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise;
- 1.12 **Minimum Order Price** means \$INSERT exclusive of GST;
- 1.13 **Order** means an order placed in writing by a Customer specifying the type and quantity of Goods required (including details of any special requirements);
- 1.14 **Order Confirmation** means a confirmation of an Order in writing issued by Recochem to the Customer.
- 1.15 **PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended;
- 1.16 **PPSR** means the Personal Property Securities Register;
- 1.17 **Price** means the price payable for the Goods as agreed between Recochem and the Customer in accordance with clause 3 of the Terms & Conditions;
- 1.18 **Recochem** means Recochem Inc., A.R.B.N 69 00 485 999 Australia Division, its related body corporates and successors and assigns or any person acting on behalf of and with the authority of Recochem;
- 1.19 **Solicitor and Client Legal Costs** means all legal costs and disbursements incurred by Recochem in pursuing any debt arising from any default in payment of the Price or any invoice when due, except for those of an unreasonable amount or unreasonably incurred, unless approved by the Customer; and
- 1.20 **Terms & Conditions** means these terms and conditions, the Application (if applicable), any invoice and any other documentation relating to the supply of the Goods and attached to these Terms & Conditions.

2. Acceptance

- 2.1 These Terms & Conditions apply and are incorporated into each and every Order for the supply of Goods or the Customer's acceptance of Goods. All other representations, terms or other agreements are expressly excluded.
- 2.2 The following terms will apply to Customers who have completed an Application and been approved with a Credit Limit:
 - 2.2.1 The Customer acknowledges that the supply of Goods on credit will not take effect until the Customer has completed the Application with Recochem and the Customer has been approved with a Credit Limit.
 - 2.2.2 A new Application must be completed if there has been no supply of Goods for more than two (2) years.
 - 2.2.3 In the event that the supply of Goods request exceeds the Credit Limit and/or the account exceeds the payment terms, Recochem reserves the right to refuse supply and/or delivery of any Goods or require payment on a cash on delivery basis.
- 2.3 Where more than one (1) Customer has entered into these Terms & Conditions, the Customers will be jointly and severally liable for all payments of the Price.
- 2.4 The Customer will give Recochem not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, telephone number, or business practice). The Customer will be liable for any Loss incurred by Recochem as a result of the Customer's failure to comply with this clause.
- 2.5 If Recochem varies these Terms & Conditions and provides reasonable notice to the Customer of the variation, these Terms & Conditions are varied and incorporated into each and every contract for the supply of Goods made between Recochem and the Customer after the date of such notice.
- 2.6 Goods are supplied by Recochem only on these Terms & Conditions to the exclusion of anything to the contrary in the terms of the Customer's Order notwithstanding that any such Order is placed on terms that purport to override these Terms & Conditions unless such terms and conditions have been agreed in writing by Recochem.

3. Orders

- 3.1 All Orders are to be made in writing as prescribed by Recochem from time to time.
- 3.2 Orders are not accepted until an Order Confirmation is issued to the Customer by Recochem.
- 3.3 The sum of an Order from Recochem must be equal to or greater than the Minimum Order Price. Where the Order is less than the Minimum Order Price, Recochem reserves the right to increase the Order to meet the Minimum Order Price.
- 3.4 Recochem has the right to substitute Goods ordered by the Customer for another type or quantity of goods (provided that such substituted goods are of similar nature and quality), unless the Customer specifically advises Recochem in writing prior to the Goods being dispatched that substituted goods will not be accepted.

4. Price, Payment & Taxes

- 4.1 At Recochem's sole discretion the Price will be either:
 - 4.1.1 as indicated on invoices or statements provided by Recochem to the Customer in respect of Goods supplied or delivered; or
 - 4.1.2 Recochem's price for the Goods as at the Delivery Date of the Goods according to Recochem's current advertised catalogue.
- 4.2 The Price indicated to the Customer for the Order is current at the time it is issued to the Customer and subject to change.
- 4.3 Recochem may request payment by the Customer of a non-refundable Deposit prior to the supply or delivery of the Goods.
- 4.4 Recochem may at any time, suspend or terminate the Customer's Credit Limit. Recochem may, in its sole discretion, require payment of the Price by the Customer either prior to or on delivery of the Goods. If pre-payment of the Price is required, payment must be received by Recochem by 12pm the day prior to dispatch of the Goods.
- 4.5 Payment of the Price will be as stated on the invoice or any other form provided by Recochem to the Customer. If no time for payment of the Price is stated then payment of the Price will be thirty (30) days following the date of the relevant invoice or statement (as the case may be) unless some other time is otherwise agreed to in writing before the issue of the invoice.
- 4.6 Payment of the Price must be made by cash, personal cheque, bank cheque, credit card, direct credit, or by any other method as agreed to between the Customer and Recochem. Any payment of the Price by credit card may incur a surcharge of up to three percent (3%) of the Price.
- 4.7 Unless otherwise stated, GST, federal taxes, local taxes and other taxes, imposts and duties that may be applicable to the supply of the Goods by Recochem will be added to the Price and invoiced with the Order or may be invoiced separately with the Order or at some other time.
- 4.8 Recochem shall charge any sales tax applicable to the Goods to the Customer, unless a signed sales tax exemption form is received in the approved manner prescribed by the Australian Taxation Office (Exemption). The Exemption must be received before Recochem issues the Order Confirmation.
- 4.9 Prices may be varied without notice to the Customer at any time.

5. Delivery of Goods & Inspection

- 5.1 The Customer acknowledges that Orders of Goods are subject to the lead times determined by manufacturing, blending, packaging and delivery and other conditions, many of which are outside the control of Recochem.
- 5.2 The Customer acknowledges that the Delivery Date specified on the Order Confirmation is an estimate only.
- 5.3 At Recochem's sole discretion, delivery of the Goods is deemed to have taken place when:
 - 5.3.1 the Goods are delivered to the Customer's address as specified in the Order (in the event that the Goods are delivered by Recochem or Recochem's nominated carrier); or
 - 5.3.2 the Customer's nominated carrier takes possession of the Goods in which event the carrier will be deemed to be the Customer's agent.
- 5.4 The cost of delivery of the Goods will be either:
 - 5.4.1 included in the Price; or
 - 5.4.2 in addition to the Price;

and will be advised to the Customer prior to delivery of any Goods.

- 5.5 The Customer is liable to pay Recochem for the costs of any special packing or packing materials used for the Goods.
- 5.6 The Customer will make all arrangements necessary to take delivery of the Goods on the day and time nominated by Recochem. In the event that the Customer is unable to take delivery of the Goods at the nominated day and time or in the event that there is a delay in the delivery of the Goods:
 - 5.6.1 the Customer acknowledges and agrees that the quality and standard of the Goods may be affected or diminished and Recochem accepts no responsibility for the same; and
 - 5.6.2 Recochem will be entitled to charge a reasonable fee for redelivery of the Goods; and
 - 5.6.3 the late delivery will not relieve the Customer of its obligations to accept delivery of the Goods.
- 5.7 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms & Conditions.
- 5.8 Recochem may, in its sole discretion, deliver the Goods by partial deliveries or separate installments in any amounts it determines. Each separate installment will be invoiced by Recochem and paid by the Customer in accordance with these Terms & Conditions and each separate installment will be a separate contract to which these Terms & Conditions apply.
- 5.9 The Customer will take delivery of the Goods notwithstanding that the quantity so delivered may be either greater or lesser than the Order Confirmation provided that:
 - 5.9.1 such discrepancy in quantity does not exceed five percent (5%); and
 - 5.9.2 the Price is adjusted pro rata to the extent of the discrepancy.
- 5.10 Where the Customer expressly requests Recochem to either deliver the Goods to an unattended location, such Goods are at the Customer's sole risk.
- 5.11 Any failure or delay in delivery of the Goods by Recochem will not entitle either party to treat the Terms & Conditions as repudiated.
- 5.12 Recochem will not be liable for any Loss whatsoever due to any failure by Recochem to deliver the Goods (or any part of them) promptly or at all, where such failure is due to circumstances beyond the control of Recochem.
- 5.13 In the event that an event outside the reasonable control of Recochem delays the production of the Goods resulting in Recochem being unable to fulfill the Order, Recochem may cancel the Order without any liability to the Customer save Recochem's obligation to return to the Customer any money received by Recochem for that Order at that time.
- 5.14 Under no circumstances shall Recochem be liable to the Customer or any other person for any Loss and whether arising out of breach of warranty, breach of contract, negligence or otherwise arising from late or non-delivery of the Goods.
- 5.15 It is the responsibility of the Customer to inspect the goods and satisfy itself as to the condition, quality and fitness for purpose of the Goods prior to use, sale or re-sale at the time the Goods are delivered. If the Customer fails to inspect the Goods, the Customer is not entitled to make any claim for the return of the Goods.

6. Packaging

- 6.1 The cost of packaging and packaging materials used in relation to the goods shall be included in the Price. Unless otherwise stated, all packaging is non-returnable to Recochem and the Customer's responsibility.
- 6.2 Containers in which Goods are delivered and for which a deposit charge is made remain the property of Recochem and must not be used for any other item or commodity that the Goods delivered in the containers. Any deposit held by Recochem will be credited to the Customer's account on the return of containers to Recochem in good order and condition and in a reuseable state. Recochem will prorate the crediting of the deposit based on which containers is accepts from the Customer.
- 6.3 Recochem may have a pallet supplier. The pallet supplier pallets are subject to a hire agreement and shall be dehered to the Customer's account on delivery. It is the Customer's responsibility to ensure that the Customer has a pallet account with the pallet supplier so that the dehering process can be completed.
- 7. Title**
- 7.1 The Customer agrees that title in and to the Goods will not pass to the Customer until:
- 7.1.1 the Customer has paid Recochem all amounts owing for any Goods supplied by Recochem; and
- 7.1.2 the Customer has met all other obligations due by the Customer to Recochem in respect of all invoices and contracts as and between Recochem and the Customer.
- 7.2 The parties acknowledge and agree as follows:
- 7.2.1 Where practicable, the Customer will keep the Goods separate and identifiable until Recochem has received payment in full of all outstanding monies the Customer owes Recochem and all other obligations of the Customer have been complied with.
- 7.2.2 Until such time as title in and to the Goods passes from Recochem to the Customer pursuant to these Terms & Conditions, Recochem may give notice in writing to the Customer to return the Goods or any of them to Recochem.
- 7.2.3 Recochem will have the right of stopping the Goods in transit whether or not delivery has been made.
- 7.2.4 If the Customer fails to return the Goods to Recochem then Recochem or Recochem's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods.
- 7.2.5 The Customer is only a bailee of the Goods and until such time as Recochem has received payment in full of all outstanding monies the Customer owes Recochem and the Customer will hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Recochem for the Goods, on trust for Recochem. The Customer will not deal with the money of Recochem in any way which may be adverse to Recochem's interests.
- 7.2.6 The Customer will not charge the Goods in any way nor grant nor otherwise give any interest (including any security interest) in the Goods until title in the Goods pass to the Customer.
- 7.2.7 Recochem may issue proceedings to recover any monies owing by the Customer, notwithstanding that title to or in the Goods may not have passed to the Customer.
- 7.2.8 Until such time as title to or in the Goods passes to the Customer by the operation of this clause 6, if the Goods are converted into other products, the parties agree that Recochem will be the owner of any end products comprising the Goods.
- 8. Risk & Loss**
- 8.1 Notwithstanding anything else in these Terms & Conditions, all risk in the Goods passes to the Customer at the time of delivery and the Customer must insure the Goods from that time.
- 8.2 If any of the Goods are damaged or destroyed after delivery of the Goods but prior to title in the Goods passing to the Customer, Recochem is entitled to receive all insurance proceeds received by the Customer for the Goods.
- 8.3 The production of these Terms and Conditions by Recochem is sufficient evidence of Recochem's rights to receive the insurance proceeds without the need for any person dealing with Recochem to make further enquiries.
- 8.4 Recochem is not responsible for any loss or damage to the Goods in transit. Recochem will render the Customer, at its own discretion such assistance as may be necessary for claims associated with the loss provided the Customer shall have notified Recochem and the particular carrier in writing immediately when the loss or damage is discovered on receipt and shall file a claim with the carrier or its insurer within 3 days of the receipt of the Goods
- 9. Dangerous Goods**
- 9.1 The Customer acknowledges that the Goods being purchased are dangerous goods.
- 9.2 The Customer is responsible for and shall comply with all Dangerous Goods Laws.
- 9.3 The Customer warrants that it shall and it shall ensure that all of its retailers or other entities which supply the Goods to the public, sell the Goods strictly in accordance with the Dangerous Goods Laws and in accordance with the 'for use' printed on or supplied with each of the Goods separately.
- 10. CCA**
- 10.1 Subject to Recochem's statutory obligations under the CCA the following provisions apply:
- 10.1.1 Recochem's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the CCA is limited to any one (1) or more of the following:
- (i) the replacement of the Goods or the supply of equivalent goods;
- (ii) the repair of the Goods;
- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the Goods repaired.
- 10.1.2 Subject to Recochem's statutory obligations under the CCA and except as provided in these Terms & Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
- 10.1.3 Recochem is not liable to the Customer for any physical or financial injury, Loss or Consequential Loss of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of negligence or in any way whatsoever.
- 10.1.4 Recochem's liability under section 274 of the CCA is expressly limited to a liability to pay the Customer an amount equal to:
- (i) the cost of replacing the Goods;
- (ii) the cost of obtaining equivalent goods; or
- (iii) the cost of having the Goods repaired,
- whichever is the lowest amount.
- 11. PPSA**
- 11.1 In this clause:
- 11.1.1 financing statement has the meaning given to it by the PPSA;
- 11.1.2 financing change statement has the meaning given to it by the PPSA;
- 11.1.3 security agreement means the security agreement under the PPSA created between the Customer and Recochem by the Terms & Conditions; and
- 11.1.4 security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that these Terms & Conditions:
- 11.2.1 constitute a security agreement for the purposes of the PPSA; and
- 11.2.2 create a security interest in:
- (i) all Goods previously supplied by Recochem to the Customer (if any); and
- (ii) all Goods that will be supplied in the future by Recochem to the Customer.
- 11.3 The Customer undertakes to:
- 11.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Recochem may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 10.3.1(i) or clause 10.3.1(ii);
- 11.3.2 indemnify, and upon demand reimburse, Recochem for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Goods charged thereby;
- 11.3.3 not register a financing change statement in respect of a security interest without the prior written consent of Recochem;
- 11.3.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Recochem; and
- 11.3.5 immediately advise Recochem of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 Recochem and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms & Conditions.
- 11.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 11.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by Recochem, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer will unconditionally ratify any actions taken by Recochem under clauses 10.3, 10.4 and 10.5.
- 12. Warranties**
- 12.1 To the extent permitted by law, Recochem does not warrant the following:
- 12.1.1 any of the Goods that are not manufactured or produced by Recochem; or
- 12.1.2 defects or deterioration in or of the Goods which, in the opinion of Recochem, have been caused by careless or improper handling, negligence, misuse, non-adherence to care, operating, cleaning or maintenance instructions, alterations or repairs carried out by anyone other than Recochem's authorised representatives, or by fair wear and tear; or
- 12.1.3 that the Goods are fit for use. The Customer acknowledges and agrees that they have had the opportunity to review the variety of Goods offered by Recochem together with their specifications and quality.
- 12.2 Recochem will not be liable to the Customer in any way for any costs or Loss of any kind whatsoever (including, without limitation, liability for Consequential Loss) incurred or sustained by the Customer or any third party arising from or in connection with the Goods and any damage caused. The Customer must take reasonable steps to mitigate any Loss it suffers or incurs.
- 12.3 Where a Good or any part of a Good is not manufactured or produced by Recochem, Recochem will use reasonable endeavours to assign to the Customer the benefit of any warranty in respect of that part of the Good.
- 12.4 Any warranty of Recochem cannot be assigned or transferred to any third party.
- 13. Returns**
- 13.1 Where the Goods delivered are short or there is other loss and damage that the Customer believes Recochem is responsible for, the Customer may, at its cost, make a claim in writing to Recochem. Any such claim must be received by Recochem within 14 days of delivery of the Goods.
- 13.2 For the purpose of making any claim under this clause 12, the Customer must:
- 13.2.1 immediately upon becoming aware of circumstances giving rise to a claim, notify Recochem in writing setting out full details of the claim and providing the Customer's contact details and not later than forty-eight (48) hours after delivery of the Goods;
- 13.2.2 provide Recochem with a descriptopm of the defect and proof of purchase of the Goods in relation to which the claim is made;
- 13.2.3 allow Recochem, its employees and/or agents full and free access to the Goods in relation to which the claim is made and to the place where the Goods are located for the purpose of conducting any inspection and tests that Recochem may in its absolute discretion consider necessary to determine whether to admit the claim.
- 13.3 Any return of Goods by the Customer will only be accepted by Recochem provided that:
- 13.3.1 Recochem has agreed in writing to accept a return of the Goods (which is may or may not do in its sole discretion and on terms and conditions specified by Recochem);
- 13.3.2 the Goods are returned to Recochem by the Customer within seven (7) days of receipt of the Goods by the Customer;
- 13.3.3 the Goods together with all packaging material, brochures and instruction materials are returned in the condition in which they were delivered;
- 13.3.4 any freight charges that are incurred in the return of the Goods are paid by the Customer.
- 13.4 If Recochem accepts a return of the Goods, Recochem may elect to repair or replace the Goods or grant a credit to the Customer in its absolute discretion.
- 13.5 Recochem will not be liable for Goods which have not been stored, used, handled or cared for in a proper manner.
- 14. Default**
- 14.1 Interest on any monies owed by the Customer to Recochem will accrue daily from the date when payment becomes due, until the date payment is made, at a rate of 1.5% per month (and at Recochem's sole discretion such interest will compound daily at such a rate).
- 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by Recochem.
- 14.3 If the Customer defaults in payment of any monies due and payable to Recochem by the Customer, the Customer indemnifies Recochem from and against all costs and disbursements incurred by Recochem in pursuing the debt, including:
- 14.3.1 Recochem's collection agency costs actually incurred; and
- 14.3.2 Recochem's Solicitor and Client Legal Costs, which the parties agree are to be recoverable on an indemnity basis.
- 14.4 A statement in writing signed by an authorised officer of Recochem setting out the moneys due or owing to Recochem at the date of the statement shall be sufficient evidence of the amount so due or owing.
- 14.5 Without prejudice to any other rights or remedies Recochem may have against the Customer, if at any time the Customer is in breach of any obligation (including those relating to payment) Recochem may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms & Conditions. Recochem will not be liable to the Customer for any Loss the Customer suffers because Recochem has exercised its rights under this clause.
- 14.6 Without prejudice to Recochem's other remedies at law Recochem will be entitled to suspend or cancel all or any part of any Order of the Customer that has not been delivered and all monies owing to Recochem will, whether or not due for payment, become immediately payable in the event that:
- 14.6.1 any money payable to Recochem becomes overdue, or in Recochem's opinion the Customer will be unable to meet its payments as they fall due; or
- 14.6.2 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 14.6.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
- 14.6.4 the Customer dies or ceases to be of legal capacity or otherwise becomes incapable of managing the Customer's own affairs for any reason.

15. Indemnity & Release

15.1 The Customer shall indemnify Recochem against all Loss including but not limited to Loss for claims of death, personal injury and damage to property which made be made against Recochem as a result of or in connection with the Customer's use of the Goods.

15.2 Subject to these Terms and Conditions, the Customer releases and holds harmless, Recochem from all Loss that the Customer may or has incurred as a result of or in connection with the Customer's use of the Goods.

16. Cancellation

16.1 Notwithstanding any other clause in these Terms & Conditions, Recochem may cancel any supply or delivery of Goods to which these Terms & Conditions apply at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Recochem will repay to the Customer any sums paid in respect of the Price for Goods not delivered. Recochem will not be liable for any Loss whatsoever arising from such cancellation.

16.2 Any Order cancellations by a Customer must be made in writing in the same manner required by clause 3.1. In the event that the Customer cancels any Order the Customer will be liable for any Loss incurred by Recochem (including, but not limited to, any loss of profits) up to the time of cancellation.

16.3 Cancellation of Orders for Goods made to the Customer's specifications or non-catalogue items will not be accepted once an Order Confirmation has been delivered to the Customer.

16.4 In the event that an Order is cancelled by a Customer, the Customer may request that Recochem endeavour to onsell the Goods to third party customers which request may be granted or declined in Recochem's absolute discretion. The Price of any Goods successfully onsold shall be offset against any monies owed by the Customer to Recochem pursuant to clause 15.2 provided that the Customer pays to Recochem an administrative fee equal to fifteen percent (15%) of all Goods onsold.

17. Privacy Act 1988

17.1 The Customer and/or the Guarantors (in this clause referred to as the Customer) agree for Recochem to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Recochem.

17.2 The Customer agrees that Recochem may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- 17.2.1 to assess an application by the Customer;
- 17.2.2 to notify other credit providers of a default by the Customer;
- 17.2.3 to exchange information with other credit providers as to the status of this Credit Account, where the Customer is in default with other credit providers; and/or
- 17.2.4 to assess the creditworthiness of the Customer.

17.3 The Customer understands and agrees that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

17.4 The Customer consents to Recochem being given a consumer credit report to collect overdue payment on commercial credit (section 18K(1)(h) Privacy Act 1988 (Cth)).

17.5 The Customer agrees that personal credit information provided may be used and retained by Recochem for the following purposes (and for other purposes as will be agreed between the Customer and Recochem or required by law from time to time):

- 17.5.1 the provision of Goods;
- 17.5.2 the marketing of Goods by Recochem, its agents or distributors;
- 17.5.3 analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
- 17.5.4 processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- 17.5.5 enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

17.6 Recochem may give information about the Customer to a credit reporting agency for the following purposes:

- 17.6.1 to obtain a consumer credit report about the Customer;
- 17.6.2 allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17.7 The information given to the credit reporting agency may include:

- 17.7.1 personal particulars (including the Customer's name, address, previous addresses, date of birth, name of employer and driver's license number);
- 17.7.2 details concerning the Customer's application for credit or commercial credit and the amount requested;
- 17.7.3 advice that Recochem is a current credit provider to the Customer;
- 17.7.4 advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- 17.7.5 that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- 17.7.6 information that, in the opinion of Recochem, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations);
- 17.7.7 advice that cheques drawn by the Customer for one hundred dollars (\$100.00) or more, have been dishonoured more than once;
- 17.7.8 that credit provided to the Customer by Recochem has been paid or otherwise discharged.

18. Force Majeure

18.1 Notwithstanding any other provision of these Terms & Conditions, no default or failure to perform on the part of Recochem will be considered to be a breach of these Terms & Conditions if such default, delay or failure to perform is due to causes beyond the reasonable control of Recochem including but not limited to causes such as strikes, lock-outs or other labour disputes, civil disturbance, action of government authorities or suppliers, storms, floods, fires, earthquakes, acts of God, unavailability or delay in availability of materials, equipment or transport and default of a carrier.

19. Limitation of Liability

19.1 Any descriptive information or other advice, recommendation, information, assistance or service provided by Recochem is intended as a general guide only and should not be relied upon and is provided without liability or responsibility (including for negligence) on the part of Recochem.

19.2 No liability will be accepted by Recochem for any inaccuracy in the information provided or the quality and performance of any Goods.

20. Customer Obligations

20.1 Customers who have ordered any plant cuttings from Recochem will only use the cuttings for cut flower or pot production and shall not engage in any type of propagation or reproduction of these plants. The Customer is liable for any Loss incurred by Recochem for a breach of this clause.

21. General

21.1 These Terms & Conditions are governed by the laws of the State of Queensland, Australia and the Customer irrevocably submit to the exclusive jurisdiction of the courts of that State.

21.2 Reference to any amount of money is a reference to the amount of lawful currency of the Commonwealth of Australia.

21.3 If any provision of these Terms & Conditions is deemed to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

21.4 If any provisions of these Terms & Conditions are inconsistent with the PPSA or CCA, the PPSA or the CCA (as the case may be) will prevail to the extent of that inconsistency.

21.5 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Recochem nor to withhold payment of any invoice because part of that invoice is in dispute. Recochem is entitled to set off against any sums owed or claimed to be owed to Recochem.

21.6 Recochem may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.

21.7 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

21.8 The failure by Recochem to enforce any provision of these Terms & Conditions will not be treated as a waiver of that provision, nor will it affect Recochem's right to subsequently enforce that provision.

21.9 These Terms & Conditions supersede all prior representations, arrangements, understandings and agreements between Recochem and the Customer and represents the entire and exclusive agreement between the parties.