



**INCITEC PIVOT LIMITED (ABN 42 004 080 264) and/or  
INCITEC FERTILIZERS LIMITED (ABN 56 103 709 155) ("Incitec Pivot")**

**TERMS AND CONDITIONS OF SALE**

Effective 1 November 2003

**STATUTORY PROVISIONS**

1. These terms and conditions are subject to the provisions of the Trade Practices Act 1974, any amendment or re-enactment thereof for the time being in force and any other relevant and applicable provision of State and/or Commonwealth legislation ("the Statutory Provisions").

**ORDERS**

2. Any order placed by a buyer (the "Buyer") with Incitec Pivot is deemed to be an order incorporating these terms and conditions. If there is any inconsistency between these terms and conditions, the terms and conditions stipulated or referred to by the Buyer or the Buyer's order, or any provision contained in Incitec Pivot's price list, these terms and conditions shall prevail.
3. Any order placed by the Buyer with Incitec Pivot constitutes an offer on the part of the Buyer which may be accepted by Incitec Pivot. The receipt of an order by Incitec Pivot does not constitute acceptance of such order by Incitec Pivot.
4. Incitec Pivot will make all reasonable efforts to have the goods delivered, or made available, to the Buyer on or before the date agreed between the parties, but any such date is an estimate only and is not binding on Incitec Pivot. Incitec Pivot will not be liable for any failure to deliver or make available, or delay in delivery or availability, of the goods for any reason.

**PRICE**

5. All prices quoted are based on net weights at guaranteed analysis on rail or road trucks at the point of loading for despatch to the Buyer.
6. Prices quoted do not include freight charges, which are the responsibility of the Buyer, unless the quotation specifically provides otherwise.
7. Unless otherwise agreed in writing, the price charged for goods shall be the price ruling as determined by Incitec Pivot at the date of delivery plus any applicable goods and services tax ("GST") which must be paid to Incitec Pivot by the Buyer when payment for the goods is due. Any price indications or price lists are subject to alteration in accordance with the price ruling at this date.
8. Where applicable, any deferred terms charge is a variable rate subject to approval. The amount will be calculated as a percentage of the total invoice including GST.

**PAYMENT AND DEFAULT**

9. All accounts are due and payable not later than the last working day of the month following the month during which the purchase is made ("the due date") subject to any express written agreement providing for varied terms.
10. If the Buyer has moneys deposited with Incitec Pivot and holds debentures issued by Incitec Pivot, the Buyer may redeem the debentures in whole or in part and use the proceeds in automatic payment of the Buyer's trading account balance as that falls due from time to time. The Buyer, however, waives any right to combine any account that the Buyer holds with Incitec Pivot, or to set off any amount that is or may become owing by the Buyer to Incitec Pivot against, any amount owing by Incitec Pivot to the Buyer. This condition overrides any other document or agreement to the contrary.
11. In the event of default of payment by the due date or breach of any other obligation, Incitec Pivot will be entitled to:
  - (a) interest on all amounts overdue, from the end of the month during which the purchase is made until the date of payment in full, at the rate of 16.75% per annum (or such other rate as Incitec Pivot may publish from time to time in lieu of that rate), calculated daily;
  - (b) the cost to Incitec Pivot of recovering the overdue amount;
  - (c) payment for all purchases made by the Buyer from Incitec Pivot, the payment of which would otherwise not have been then due and payable;
  - (d) disallow any discounts or rebates otherwise claimable by the Buyer;

terminate or suspend delivery of any order which is the subject of any other sale between Incitec Pivot and the Buyer;

cancel the Buyer's commercial credit account with Incitec Pivot; and

treat the Buyer's default as a repudiation of any existing contract for the purchase of goods and recover any unpaid sum from the Buyer by way of liquidated damages.

12. Incitec Pivot may at all times at its sole discretion and without being under any duty or obligation to provide reasons review, alter or terminate the Buyer's credit limit or payment terms without notice.

**DELIVERY**

13. The goods will be delivered ex-works unless Incitec Pivot agrees otherwise in writing.
14. If Incitec Pivot agrees to arrange for the dispatch of the goods to the Buyer, all costs of delivery will be for the Buyer's account. Goods dispatched by Incitec Pivot will be at the Buyer's risk and Incitec Pivot is under no obligation to insure the goods while in transit.

**RISK AND PROPERTY**

15. The risk of loss of, or damage to, the goods will pass to the Buyer on dispatch of the goods from Incitec Pivot's primary distribution centre or a regional service centre, and the Buyer must insure the goods until sold by the Buyer.
16. Property in, and ownership of, the goods will not pass from Incitec Pivot to the Buyer until the whole amount payable to Incitec Pivot for all goods supplied and/or anything else due under these terms and conditions has been paid in full to Incitec Pivot.
17. Until property in the goods passes to the Buyer:
  - (a) the Buyer must store the goods separately from its own goods or those of any other person so they are clearly identifiable as the property of Incitec Pivot;
  - (b) the Buyer must properly store and look after the goods (including keeping the goods safe from heat, moisture, compression and impact damage) in accordance with Incitec Pivot's storage requirements set out in literature provided by Incitec Pivot;
  - (c) Incitec Pivot, its employees or agents may enter the Buyer's premises between 9.00am and 5.00pm on any business day to inspect the goods; and
  - (d) the Buyer may sell lease or hire the goods in its ordinary course of business as a fiduciary (but not agent) of Incitec Pivot and must hold all proceeds of sale lease or hire on trust for Incitec Pivot in a separate account. If the Buyer is not paid by the third party, the Buyer must on the written request of Incitec Pivot assign its claim against the third party to Incitec Pivot.
18. If goods are damaged or destroyed before property passes to the Buyer, Incitec Pivot may (in addition to any other right or remedy under these terms and conditions) receive all insurance proceeds payable for the damaged or destroyed goods, whether or not the price of the goods has become payable under these terms and conditions or under any contract for supply. These terms and conditions are sufficient evidence of Incitec Pivot's right (as against the Buyer) to receive payment of the insurance proceeds without the need for further inquiry by any person dealing with Incitec Pivot.
19. If payment is not made by the Buyer on the due date, the Buyer must deliver the goods to Incitec Pivot on demand. If the Buyer does not comply with such a demand, Incitec Pivot, its employees or agents may:
  - (a) enter the Buyer's premises at any time to do all things necessary in order to take possession of the goods, and the Buyer must procure the consent of all other persons having any interest in the premises where the goods are situated to entry of those premises by Incitec Pivot, its employees or agents; and

- (b) credit the Buyer's account with the lower of the price for the goods or the net realisable value of the goods, or re-sell the goods and apply the proceeds of sale in reduction of the outstanding balance due to Incitec Pivot under these terms and conditions.

The Buyer must pay Incitec Pivot any expense of repossession, transportation, storage or re-sale incurred by Incitec Pivot. If Incitec Pivot re-sells the goods, it must account to the Buyer for any balance remaining after deduction of any costs and payment of all amounts due to Incitec Pivot under these terms and conditions.

#### **GENERAL LIEN**

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

#### **SET-OFF**

21. Incitec Pivot in its sole and unfettered discretion may at any time set-off any amount owing by Incitec Pivot to the Buyer on any account whatsoever, including any monies held by Incitec Pivot for or on account of the Buyer, against any amount owing by the Buyer to Incitec Pivot in respect of goods supplied by Incitec Pivot whether or not that amount has become due and payable.

#### **BULK CONTAINERS**

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

#### **COMPLIANCE AND FITNESS OF GOODS**

25. The Buyer must comply with all laws, by-laws and statutory and regulatory requirements of any regulatory authority applicable to the Buyer, and Incitec Pivot's minimum standards (as determined by Incitec Pivot from time to time), and in particular without limitation all those relating to the environment, safety, dangerous goods, storage, handling, insurance and sale of all goods supplied by Incitec Pivot under these terms and conditions.

26. The Buyer must not use or re-sell the goods for use, or use the goods itself, in an application or purpose other than those applications or purposes for which Incitec Pivot recommends the goods, as set out in Incitec Pivot's sales and promotional material and material safety data sheets.
27. The Buyer acknowledges that it alone is responsible for determining the fitness of the goods for the purpose for which the Buyer intends them.

#### **CONDITIONS, WARRANTIES AND LIABILITY**

28. All conditions, warranties, undertakings and representations expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.
29. So far as the law permits, the liability of Incitec Pivot for a breach of a condition, warranty, undertaking or representation that cannot be excluded is limited, at Incitec Pivot's option, to:
- (a) the replacement or repair of the goods;
  - (b) the supply of equivalent goods; or
  - (c) the cost of replacing or repairing the goods or of acquiring equivalent goods.

The Buyer agrees to release, hold harmless and indemnify Incitec Pivot to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or wilful misconduct on the part of Incitec Pivot or others) in connection with the sale of goods by Incitec Pivot.

30. So far as the law permits, Incitec Pivot is not liable in any way for any indirect or consequential loss or loss of actual or prospective revenue or profit of the Buyer or any other person including, without limitation, any loss by reason of delay, defective or faulty goods, negligence or any act or matter or thing done, permitted or omitted by Incitec Pivot.
31. Incitec Pivot shall not be liable for any loss, damage or injury arising directly or indirectly from Incitec Pivot supplying the Buyer goods which are blended by the Buyer or third parties outside Incitec Pivot's works or which are blended by Incitec Pivot to a special prescription supplied by the Buyer or a third party at the request of the Buyer. If Incitec Pivot recommends the blending of a special prescription, Incitec Pivot's liability for any loss, damage or injury sustained by any person or loss or damage to any property will be limited to the price of any goods purchased from Incitec Pivot as a component of such prescription, to the extent permitted by law.
32. Incitec Pivot shall not be liable for any loss, damage or injury arising directly or indirectly from services provided by parties other than Incitec Pivot in connection with the supply, storage or use of the goods.

#### **WAIVER**

33. The failure of Incitec Pivot at any time to require performance of an obligation under these terms and conditions is not a waiver of its right to claim damages for breach of that obligation and/or at any other time to require performance of that or any other obligation under these terms and conditions.