



Definitions

- "**BCS/Seller**" means **Building Chemical Supplies (Australia) Pty Ltd** (ACN 115 038 938) and any associated entities or businesses.
 - "**Contract**" means a contract for sale by BCS to the Customer of the Product incorporating these Terms and Conditions.
 - "**Customer/Buyer**" means the person (legal or natural) who accepts a written or verbal quotation from BCS for the sale of the Product.
 - "**Location**" means the place where the Product is situated as specified on Customer's invoice.
 - "**Item/Product**" means any product or goods/equipment, trades or services/materials provided as sold to the Customer pursuant to the Contract as specified on the Customer invoice.
 - "**Price**" means the charges for the Product.
 - "**Guarantor**" the person who signs the written quotation on behalf of a company, partnership or trust.
 - "**GST**" means goods and services tax payable on all goods and services by the customer, and BCS reserves the right to specify quotations and prices on both a GST inclusive and GST exclusive basis.
- 1.1 Unless otherwise agreed in writing by the Seller (see 1.16), the Buyer acknowledges that it is aware of the contents of and agrees that it will be bound by these Terms and Conditions - if the Buyer places an order with the Seller and it is accepted by the Seller. BCS can accept that the representative of the Buyer has the power or authority to form a Contract between the Buyer and BCS without any further investigations. The Seller is not bound by any Terms and Conditions contained in any document issued by the Buyer.
- 1.2 Once an Order for Items has been accepted by the Seller, it cannot be cancelled by the Buyer. A contract shall only come into existence when the BCS quotation, is accepted by the Buyer in writing (which shall include facsimile or e-mail) and is received by BCS, or when the Buyer's order is confirmed and accepted by BCS, whichever is earlier. However, in limited circumstances, BCS holds the discretionary power to allow a customer to cancel an order after acceptance. The supply of Items is subject to availability. If the Seller is unable to supply all of the Buyer's Order, these Terms and Conditions continue to apply to any part of the Order supplied. Delivery dates advised to the Buyer are advisory dates only, and comprise the best estimated date for delivery by BCS, and customer is assured of all efforts to be made to ensure delivery as close to expected date as possible.
- 1.3 Where a written quotation has been given by the Seller, the selling price is the price specified in quotation (i.e. quotation for stock items only), in any other case the selling price is the price specified in the Price List, current when the Buyer places the Order with the Seller. The Buyer agrees, by these terms and conditions, that any quotation supplied by BCS is only an estimate-particularly where the exact extent of the work and costings are unknown until full examination of the job is made by BCS. Price Lists can be revised and reissued as appropriate and required by BCS, and any new or amended pricelists shall immediately void any earlier pricelists. Unless otherwise stated, the selling price does not include GST. The Seller may at any time change its Price List to reflect any changes in exchange rate or the imposition of any duties, levies or the taxes. Prices are subject to stock on hand. The Seller may charge a reasonable handling fee for all Orders delivered to the Buyer.
- (a) On pump, machinery and non-stock items or specific products that are required for special projects a non-refundable fifty (50%) percent deposit must be paid to the Seller at the time of making the Order.
 - (b) Products are regularly itemised within the quotation and then invoice, but BCS reserves the rights to use an all-inclusive, lump-sum, quotation or invoicing as necessary, within the usual BCS invoice terms of payment.
- 1.4 These Terms and Conditions of Use are strictly subject to the Laws of Queensland, Australia; and any dispute as to monies owing, or any other issue in contention, shall be subject to the Laws of Queensland. Any party (whether individual or corporate) dealing with BCS hereby agrees to have any dispute resolved within the



jurisdiction of Queensland, which shall include Mediation and Arbitration at the reasonable request, and sole discretion of BCS.

1.5

- (a) If the Buyer fails to take delivery of the Product or any part of them when they are made available to it, or fails to provide any instructions to enable the Product to be delivered on the due date, BCS shall be entitled, upon giving written notice to the Customer that BCS is holding the Product, can claim all costs and expenses (including storage and insurance charges) arising from its failure.
- (b) The Buyer must inspect the goods immediately following delivery. Any claim that the goods are not in accordance with these Terms and Conditions (including if they are damaged during delivery or are short delivered) must be made at the time of delivery or in writing to the Seller within 48 hours after delivery of goods to the Buyer. If the Buyer fails to make a claim then, to the extent permitted by law, the goods are deemed to have been accepted by the Buyer and no refund will be payable to the Buyer and if Products are not yet paid for in full – full receipt of payment is still required in accordance with these Terms and Conditions. BCS has the right to rectify any equipment repair errors within 60 days from the date the error has been reported to BCS by the customer.
- (c) BCS may, at its discretion and if applicable, deliver the product by instalments. Where the product is so delivered by instalment, each instalment shall be deemed to be the subject of a separate Contract and no default or failure by BCS in respect of any one or more instalments shall vitiate the Contract in respect of Product previously delivered or undelivered Product.

1.6 The Buyer may only return goods for credit which the Buyer claims are defective with the Seller's consent. The goods must be returned within 21 days of the date of delivery in an unsoiled, undamaged and reasonable condition and, where appropriate, in the original packaging. A reasonable handling fee of no less than 15%, for any returned goods will be charged to the Buyer.

1.7 The Buyer must pay for goods ordered by the Buyer within 14 (fourteen) days after delivery (unless agreement between Buyer and BCS is in place to assist different circumstances with various companies). Time is of the essence with respect of the Buyer's obligation to make payment for goods supplied by the Seller to the Buyer.

1.8 If the Buyer does not make payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or an insolvency event (such as appointment of an administrator, receiver or liquidator) in respect of the Buyer arises or is reasonably suspected by the Seller, the Seller may (without limiting any other right or claim it may have against the Buyer):

- (i) Charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the Australian & New Zealand Banking Group's reference rate for business loans, available to prime commercial customers plus 5% calculated from the date of payment was due until the date payment is made (both dates inclusive);
- (ii) Vary or withdraw any approved credit limit;
- (iii) Cancel or suspend any unfilled orders;
- (iv) Terminate any contract between the Seller and the Buyer;
- (v) Cancel any rebate, discount or allowance due or payable by the seller as at the date of the event;
- (vi) Enter (at any time) any premises in which the Seller's goods are stored, to enable the Seller to inspect the goods and reclaim possession of the goods;
- (vii) Exercise discretion in instituting any recovery process at the expense of the Buyer.

1.9 If any part of an invoice is in dispute, the balance will remain payable. The Buyer has no right to set off any claim against the Seller from moneys owing to the Seller. Additionally, any typographical, clerical or other omission in quotation, invoice or other document or information issued by BCS shall be subject to correction without any liability on the part of BCS.



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- 1.10 Goods supplied by the Seller to the Buyer are at the Buyers risk immediately on the earlier of delivery to the Buyer or the Buyer's custody, including its Carrier or forwarder. The Buyer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.
- 1.11 Property in the goods supplied by the Seller to the Buyer does not pass to the Buyer until those Products have been paid for in full. Until Products have been paid for in full, the Buyer takes custody of the Items and retains them only as fiduciary agent and Bailee of the Seller and:
- (i) To the extent possible, the Buyer must store the goods in a manner that shows clearly they are the property of the Seller, maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
 - (ii) The Buyer may sell the goods, in the ordinary course of its business, but only as fiduciary agent for the Seller. The Buyer must not represent to any third party the Buyer is acting in any capacity for or on behalf of the seller and the Buyer has no authority to bind the seller to any contract or otherwise assume any liability for or on behalf of the Seller. The Buyer receives all proceeds (including any proceeds from insurance claims) in trust from the Seller and must keep the proceeds in a separate bank account until the liability of the Seller is discharged;
 - (iii) If the Buyer uses the goods in some manufacturing or construction process of its own or of a third party, the Buyer must hold in trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds.
- 1.12 To the extent permitted by law, these Terms and Conditions exclude all other conditions, warranties liabilities, or representations in relation to the goods. Where legislation implies in these terms and conditions any condition or warranty that cannot be excluded or modified, the liability of the Seller for a breach of any such condition or warranty is limited at the Seller's option to any one or more of the following:
- (i) Replacement of the goods or supply of equivalent goods;
 - (ii) Payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Buyers account, in cash or by cheque at the Sellers discretion; or
 - (iii) Repayment of any part of the purchase price of the goods which has been paid by the Buyer, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion.
- 1.13 The Seller is not liable for any loss or damage of any kind whatsoever and howsoever arising, including (without limitation) any direct, indirect, special or consequential loss including without limitation, loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), arising out of or in connection with the supply of goods, notwithstanding any negligence claim against the Seller or any of its employees or agents (and the limitation of liability to the seller is acknowledged to be the maximum possible according to any applicable Legislation). BCS accepts no responsibility for supplied goods where goods are received from customers direct or from third party suppliers.
- 1.14 The Application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- 1.15 If any provision of these Terms and Conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these Terms and Conditions remain in force.
- 1.16 The Seller may amend or vary these Terms and Conditions by notifying the Buyer in writing of the amendment or variation.
- 1.17 Disclaimer/Right to be retained by BCS – it is acknowledged that in the event of any ambiguity or misunderstanding that the rights of BCS to full payment, full repairs and other associated (including



storage/recovery expenses) costs are to be recovered by BCS before repaired goods or products are returned or available for collection. BCS shall enforce such policy at all times.

1.18 The Law of Queensland governs these Terms and Conditions. The Buyer submits to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

1.19 **CONDITIONS OF: Building Chemical Supplies (Australia) Pty Ltd**
BSB: 014-580 ACCOUNT: 4963-27989 -DIRECT DEBT AUTHORITY (AUSTRALIA ONLY)

Our Commitment to you:

- (a) This document outlines our service commitment to you, in respect of the Direct Debit Request (DDR) arrangements made between BCS and you. It sets out your rights, our commitment to you and your responsibilities to us together with where you should go for assistance.
- (b) Initial terms of the arrangement - In terms of the Direct Debit Request arrangements made between us and signed by you, we undertake to periodically debit your nominated account for the agreed amount for printing costs.
- (c) Drawing Arrangements – the first drawing arrangement will occur on - a nominated day as indicated. If any drawing falls due on a non-business day, it will be debited to your account on the next business day following the scheduled drawing date. We will give you at least 14 days notice when changes to the initial terms of the arrangement are made. This notice will state the new amount, frequency, next drawing date and any other changes to the initial terms; if you wish to discuss any changes to the initial terms, please contact us by phone.

1.20 Privacy and Confidentiality – all parties to this transaction hereby confirm the strict confidentiality of all information pertaining to this transaction, and to all related financial dealings of each party vis-à-vis. Confidentiality is confirmed as a fundamental requirement of this transaction.

- (a) Agreement is hereby confirmed, that BCS may seek consumer credit information with the Privacy Act Legislation. If BCS considers it relevant to assess my/our application of commercial credit, I/we agree to BCS obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit approved by BCS. The Buyer hereby agrees to sign such authorities as are necessary to enable BCS to receive information.
- (b) Exchanging information with other credit providers within the Privacy Act Legislation, I/we also agree to BCS obtaining personal information about me/us from other credit providers, whose names I/we may have provided for BCS or that may be named in a credit report, for the purpose of assessing my/our application for commercial credit made to BCS.
- (c) Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit as per Privacy Act legislation, I/we agree that BCS may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

1.21 Other conditions;

- (a) Packaging – containers and packaging shall be one-way, and shall not be returnable. Pallets used for deliveries remain the property of BCS. Any pallets not returned within a period of several weeks, shall be charged to the Buyer. The Seller may, at its discretion, simply charge for pallets according to then current industry rates.
- (b) Containers of bulk product – where applicable, large containers of synthetic resin products shall be exclusively delivered to Buyers employing the necessary trained staff, which may incur additional costs. Such Containers shall then be the responsibility of the buyer to use or dispose of pursuant to Legislation, as understood that there is no responsibility on the Seller whatsoever with respect to such Containers.
- (c) Mixing ratios specified are not to be altered, and if shown to be incorrectly mixed by the Buyer, this shall be the Buyers responsibility. The Buyer therefore understands the absolute requirement for accurate application and mixing ratios, which must be in accordance with manufactures technical data sheets



- (TDS), and that the application and mixing must be carried out properly by the Buyer, and the Seller warrants that the correct products for the purpose or job will be supplied by the Seller.
- (d) Act of god, unavailability of raw materials – BCS reserves its right to consider any previous price quotation given any such extenuating and genuine circumstances. BCS reservation of rights includes invoicing any deliveries at spot or varied prices, and BCS shall provide prompt information to any Buyer in this event; including any price variations for part quantities of a contract, and whether in such extenuating circumstances BCS can deliver the required product at all. Neither party shall be liable for any delay of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled to a reasonable extension of time for the performance of such obligations.
 - (e) All Occupational Health and Safety legislative requirements applicable to the building and construction industries shall be complied with by all parties involved in this transaction, and each party shall be responsible for products including reactive resins and solvent-based products from the time that such products are in the possession of each party.
 - (f) When BCS employees or agents are working on the site of a customer, it is the customer’s sole responsibility to have all required public liability and other insurances for the property and buildings of the customer. The Customer hereby acknowledges that BCS employees will not be disadvantages by being on site, and are covered by all appropriate insurances of the customer. The Buyer acknowledges that, to confirm insurance requirements for each financial year, that a Certificate of Currency is to be supplied by the Buyer as to public and products liability. Such Certificate is to be supplied at the commencement of each financial year.
 - (g) The insurance requirements of the Seller is that the attached BCS Quality Assurance Daily Sheet be completed by the Buyer, as a condition of delivery of products that such Daily Sheet to be provided on each Order. The prompt assistance of Buyers in this regard is required, and appreciated as part of the initial Order process, i.e. same is to be completed and returned to the Seller within seven (7) working days of the project date. The Buyer understands that each job requires the said Quality Assurance Daily Sheet.
 - (h) Customer complaints shall be directed to the General Manager of BCS, who will respond to complaints as soon as practically possible.
 - (i) All notices shall be in writing and shall be sent to the address of the recipient set out in the BCS quotation. Any such notice may be delivered personally or by letter, email or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by post 48 hours after posting and if by email or facsimile transmission when dispatched.
 - (j) Payment- BCS accepts payment by electronic funds transfer (EFT), details of which will be outlined on the issued invoice. Please email, post or fax remittances to us so that your payment can be allocated to your account.

The purchaser understands and accepts the above contents by signing this page in confirmation, along with the completion and return of the Credit Application Account Form.

SIGNED:

(Authorised Representative/Customer)

CAPACITY/POSITION HELD:

DATED:



GUARANTEE

In consideration of **Building Chemical Supplies (Australia) Pty Ltd** agreeing to supply goods on credit to _____ (insert Company name) we hereby jointly and severally guarantee to **Building Chemical Supplies (Australia) Pty Ltd** the due performance by the Company of all of its obligations to **Building Chemical Supplies (Australia) Pty Ltd** and the payment by the Company of all monies owing to **Building Chemical Supplies (Australia) Pty Ltd** on account for goods and other products supplied to it and in the event of the Company failing to pay to **Building Chemical Supplies (Australia) Pty Ltd** such monies then we will pay to **Building Chemical Supplies (Australia) Pty Ltd** all such monies on demand.

This Guarantee shall be a continuing guarantee and shall not be considered as wholly or partly satisfied or discharged by a payment or liquidation at any times hereafter of any sum or sums of money for the time being due to **Building Chemical Supplies (Australia) Pty Ltd**.

This guarantee shall not be determined by the death of any one or more of us and for the purpose of enforcing this guarantee you may act as if we are the principal debtor and waive all rights as surety.

Dated this _____ day of _____ 20_____

Guarantor _____
(Print Name)

Signature _____
(Print Name)

Witness _____
(Print Name)

Signature _____
(Print Name)

Guarantor _____
(Print Name)

Signature _____
(Print Name)

Witness _____
(Print Name)

Signature _____
(Print Name)