

NZ CHEMICAL CARE & STORAGE LIMITED

GENERAL TERMS AND CONDITIONS

FOR THE PROVISION OF WAREHOUSING DISTRIBUTION AND THE STORAGE OF GOODS

Version 1.7

1 ENGAGEMENT

- 1.1 The Key Terms and these General Terms and Conditions read together are called "the Agreement". The term "Chemical Care" includes (unless the context suggests otherwise, its employees, agents and contractors).
- 1.2 The Customer agrees to engage Chemical Care to perform the Services for the Term (which includes any renewal period) and pay for the Services on the terms and conditions set out in this Agreement, and Chemical Care accepts the engagement.
- 1.3 The parties undertake to perform their respective obligations in the manner set out in this Agreement.
- 1.4 If the Customer has been advised of the Key Terms and continues thereafter uses the Services, then the Customer shall be deemed to have accepted the Key Terms and the General Terms and Conditions and thereby be bound by the Agreement.

2 STORAGE AND DISTRIBUTION REQUIREMENTS

- 2.1 The Customer will provide Chemical Care with a monthly container arrival schedule for each month during the Term in respect of the Goods it wishes to store with Chemical Care. The Customer shall make orders for Services to be provided by Chemical Care based on those forecast requirements, and by using a form of order and in the manner specified by Chemical Care from time to time. Orders shall specify the type of Goods, the volume of Goods, the time and date of delivery to the Warehouse, and any other information or instructions required by Chemical Care. No order shall be binding upon Chemical Care unless Chemical Care's acceptance of such order has been notified to the Customer. Chemical Care shall not be required to accept orders that exceed the Maximum Stock Holding limit specified on the front page of this Agreement.
- 2.2 Chemical Care shall store the Goods by way of pallets. The Customer will provide pallets that are of 1200mm by 1000mm (or such other size as Chemical Care notifies the Customer) for storage of its Goods unless otherwise agreed in writing. Where the Customer hires those pallets from a third party, it must provide all necessary information and assistance to Chemical Care to enable Chemical Care to de-hire those pallets to the Customer's transporter or clients.
- 2.3 Each pallet shall be loaded by Chemical Care to normal and reasonable capacity, and any part pallet shall be charged as for one fully loaded pallet. Pallet configuration will be at the absolute discretion of Chemical Care.
- 2.4 Chemical Care shall store the Goods away from any articles or things which might be deleterious to the Goods, provided that the nature of the Goods is apparent or is declared by the Customer on or before delivery. If the Goods or any part requires special attention as to how they are to be stored safely, then this requirement must be accurately and fully disclosed by the Customer prior to delivery of the Goods. Chemical Care may in its absolute discretion refuse to store the Goods in accordance with such special requirements.
- 2.5 The Customer shall provide full, accurate and reasonable instructions from time to time to Chemical Care relating to distribution, delivery or other dealing with the Goods. Chemical Care will deal with the Goods in accordance with those instructions.
- 2.6 The Customer must ensure that labelling of all Goods is sufficiently detailed and in strict compliance with the standards of the New Zealand Chemical Industrial Council (NZCIC/Responsible Care) and the Hazardous Substances & New Organisms Act 1996 ("HSNO") ("Regulatory Standards"). The Customer is liable for any non-compliance with the Regulatory Standards or any other labelling requirements specified from time to time by Chemical Care.
- 2.7 If agreed by Chemical Care, and without limiting the Customer's obligations under clause 2.6, the Customer may provide Chemical Care with templates for the labelling requirements for any Goods, and blank labels (and all other necessary information and assistance) to enable Chemical Care to manufacture labels on site.
- 2.8 In performing its obligations under this Agreement, Chemical Care will rely upon any instructions, authorisations, approvals or other information provided to it by the Customer.
- 2.9 Chemical Care may refuse to load, dispatch or otherwise deal with any Goods unless the Customer has complied with its obligations under this clause 2.

3 CHEMICAL CARE'S OBLIGATIONS

- 3.1 Chemical Care will use all reasonable endeavours to:
- (a) provide a customer collection point, and short notice collection service, at the Warehouse;

- (b) provide and maintaining resources necessary to ensure compliance with this Agreement;
- (c) comply with its standard operating procedures as notified by the Customer from time to time;
- (d) carry out physical receipt of Goods in accordance with this Agreement;
- (e) liaise with those distribution carriers nominated by the Customer and assisting same so as to enable the objectives of this Agreement to be met;
- (f) provide support to the clients of the Customer in accordance with the provisions of this Agreement;
- (g) maintain accurate records of transactions;
- (h) keep secure all of the Customer's Goods while same are in the care of Chemical Care;
- (i) invoice for services promptly and clearly;
- (j) inform the Customer of key issues as these issues become known to Chemical Care;
- (k) inform the Customer promptly when Chemical Care fails to meet its responsibilities and promptly providing the Customer with a rectification plan;
- (l) ensure that at all times the Warehouse meets all statutory requirements for the provision of the Services of the various classes of Goods stored and distributed by Chemical Care on behalf of the Customer;
- (m) hold regular management reviews with the Customer at times agreed by the parties;
- (n) contribute to quality team activities and discussions within the Customer as reasonably required.

4 CUSTOMER OBLIGATIONS

4.1 The Customer will ensure that:

- (a) none of its staff or contractors request releases of any Goods from Chemical Care stock without authorised paperwork in a form satisfactory to Chemical Care;
- (b) all its instructions for stock transactions and adjustments are clear and unambiguous;
- (c) all variances between the Customer and Chemical Care stock lists are identified by the Customer and it will request transaction reports and recounts within 24 hours of the generation of the relevant stock report by Chemical Care;
- (d) it reconciles transaction reports and re-counts requested within 24 hours of the relevant transaction report being provided;
- (e) it approves all variance report adjustments approved within 4 hours of the generation of the relevant stock report by Chemical Care;
- (f) it checks all returned Goods and makes a decision on its course of action with respect to any damaged/quarantined Goods within 2 business days of receiving the Goods.
- (g) it transmits orders for next day's delivery of Goods to Chemical Care by 12 noon on the preceding day;
- (h) it arranges and pays for emergency response services (or substantially similar emergency services from a reputable service provider approved in writing by Chemical Care) to be provided in respect of its Goods, and provides Chemical Care with up-to-date, emergency 24 hour contact details for the provider of those services;
- (i) that it obtains, and provides Chemical Care with, a HSNO Act approval number for any Goods prior to delivery of those Goods to Chemical Care's Warehouse, in accordance with the HSNO Act. In no circumstances, will Chemical Care be obliged to deliver any Goods unless it has first received such approval number;
- (j) for urgent same day orders, it gives Chemical Care at least a hour's notice and requests no more than 1 pallet per day under urgent same day delivery.

4.2 Upon delivery of the Goods, the Customer shall forthwith supply all medical, safety and other information relating to the composition or toxicity of the Goods. Such information is required by Chemical Care to enable Chemical Care (or any emergency services) to safely store, dispose or handle the Goods.

4.3 In the event of inadequate packaging or defects in the containment of the Goods or if the Goods are due to expire (as determined by Chemical Care), the Customer will following a notice from Chemical Care:

- (a) arrange for the collection of any such Goods within 2 business days of Chemical Care's notice (time being of the essence); or
- (b) if the Customer fails to comply with its obligation under clause 4.3(a) (at Chemical Care's sole and unfettered discretion) either:
- (i) pay the full costs of transportation and delivery of the Goods to the Customer's premises; and /or
- (ii) pay the full costs of transportation, delivery to and disposal of the Goods by any third party.

- 4.4 In the event that any damage or leakage or seepage occurs due to inadequate packaging or defects in the containment of the Goods, the Customer shall indemnify and hold Chemical Care harmless against all claims, expenses, losses (whether direct, indirect, consequential, special or otherwise), damages and costs of any kind whatsoever including legal costs on an indemnity basis ("Liabilities") (including all Liabilities arising as a result of damage to property, or any claim by a third party, and all legal costs (on a solicitor/client basis) in relation to any Liabilities). For clarity, any costs relating to the cleaning up of the leakage or seepage, including any damage done to the goods of third parties, damage to any buildings and other costs incurred by Chemical Care including legal costs) shall be paid by the Customer on demand.
- 4.5 The Customer shall indemnify Chemical Care and keep indemnified Chemical Care against all Liabilities arising from any breach of this Agreement by the Customer, any other act or omission of the Customer, or any act or omission of Chemical Care that arises from any instructions or directions (or lack thereof) provided to Chemical Care by the Customer in connection with this Agreement.
- 4.6 Where Chemical Care delivers Goods to the Customer or a third party, the Customer will or will procure that the third party inspects the Goods and confirms that there are fit for purpose before using the Goods. In no event will Chemical Care be under any liability for the delivery of the wrong product except to the extent it will collect the wrong product and deliver the correct product. Nothing in this clause will limit Chemical Care's responsibility to collect any product which Chemical Care mistakenly delivers to the Customer and deliver the correct product to the Customer.
- 4.7 The Customer will ensure that it and its staff and contractors who access Site comply with industry best practice, all relevant laws and Chemical Care's instructions of an incidental to such access the Goods and the handling of the Goods.
- 4.8 Without limiting clause 4.7, where Chemical Care is delivering a tracked substance (being a substance listed in schedule 1 of the HSNO Act), the Customer will:
- (a) Ensure that:
 - (i) an approved handler at the place of delivery holds a test certificate as an approved handler of the substance, and is prepared to accept responsibility for the substance; and
 - (ii) the place of delivery has a test certificate for the amount and hazard classification of the substance if so required by the relevant HSNO Act regulations; and
 - (iii) the place of delivery complies with the relevant HSNO regulations.
 - (b) Issue Chemical Care with written confirmation (in such form as Chemical Care requires) that the Customer has complied with its obligations under clause 4.8(a). In no circumstances, will Chemical Care be obliged to deliver any Goods comprising tracked substances unless it has first received such confirmation.
- 5 WARRANTIES**
- 5.1 Chemical Care warrants that all of the Services performed under this Agreement will be performed in a proper, professional and workmanlike manner.
- 5.2 The Customer warrants and undertakes as follows:
- (a) that the Customer has full legal rights of ownership and/or possession over the Goods;
 - (b) that all information (written and oral) provided by the Customer to Chemical Care (including the classification of the Goods under the Dangerous Goods Act 1974 or other such enactment replacing it), is true, complete and accurate in all respects, and is not otherwise misleading;
 - (c) that the Goods fall within only Classes 2, 3, 4, 5, 6, 8 or 9 under the Dangerous Goods Act/HSNO Act, or are of a non-hazardous nature;
 - (d) that the Goods and any container or packaging concerning the Goods fully comply with all the requirements of the Dangerous Goods Act 1974, the Toxic Substances Act 1974, the HSNO Act 1996, MAF requirements and such other legislation, regulation or by-laws as may apply;
 - (e) that if the Goods or any part of the Goods require any special care or method of storage, such information has been fully and fairly disclosed in writing to Chemical Care before the Goods are taken into storage; and
 - (f) that the Customer has full power and right to enter into this Agreement.
- 6 RISK AND INSURANCE**
- 6.1 Notwithstanding anything else in this Agreement to the contrary, risk in the Goods remains with the Customer at all times.
- 6.2 The Customer will hold a Material Damage policy which covers the Goods whilst in store at the Warehouse against fire, full perils (including without being limited to) natural disaster, burglary, , accident or any other event whatsoever to their replacement value for the period of storage of those Goods by Chemical Care.
- 6.3 The Customer will hold a Goods in Transit policy of not less than the replacement value of the Goods in transit plus freight costs, such policy to include cover for loading and unloading the Goods.
- 6.4 The Customer will hold with respect to any property damage caused by the Customer it's staff and contractors who access Site, or caused by the Goods, a public and product liability policy with an indemnity limit of no less than \$20,000,000.
- 6.5 The Customer will hold with respect to any property damage caused by the motor vehicles of the Customer it's staff and contractors who access Site, a motor vehicle policy with a third party legal liability limit of not less than \$20,000,000.
- 6.6 The Customer will ensure that the policies described in clauses 6.2 to 6.5 are from reputable insurers, are on usual terms and are not prejudiced by the terms of this Agreement. The Customer will provide Chemical Care with certificates of currency evidencing the policies prior to delivery of the Goods and thereafter within 2 working days of Chemical Care's request. Notwithstanding anything in this Agreement to the contrary, in the event that the Customer fails to supply such certificates of currency, Chemical Care is under no obligation to accept delivery of the Goods.
- 7 CHEMICAL CARE'S LIABILITY**
- 7.1 Notwithstanding anything in this Agreement to the contrary, Chemical Care will not be liable in contract, tort (including in negligence) or otherwise at law to the Customer for claims, expenses, losses (whether direct, indirect, consequential, special or otherwise), damages and costs of any kind. The Customer acknowledges that it is the Customer's responsibility to carry sufficient insurance cover to protect itself against such loss including where obliged to under clause clauses 6.2 to 6.5 and otherwise at sees fit.
- 7.2 If despite clause 7.1, Chemical Care is liable to the Customer for claims, expenses, losses (whether direct, indirect, consequential, special or otherwise), damages and costs of any kind under this Agreement or otherwise, Chemical Care's liability will be limited to the amount Chemical Care can recover under any policy of insurance held by Chemical Care. The Customer agrees that the remedy provided under this clause is the Customer's sole and exclusive remedy against Chemical Care
- 7.3 In no event shall Chemical Care be under any liability for any indirect or consequential losses or the loss of profits or claims, expenses, losses (whether direct, indirect, consequential, special or otherwise) caused by
- (a) rust, gradual deterioration, moths, vermin, mould, fungi, mildew, rot, decay, micro-organisms, bacteria, and protozoa; or
 - (b) external water or moisture, either durability or protection from external water or moisture entering a building or structure, or the effects thereof; or
 - (c) any other exclusion under the insurance policies held by Chemical Care..
- 7.4 Except for the warranties set out herein, Chemical Care makes no other warranty to the Customer in connection with the Services or this Agreement, and all other warranties, whether expressed or implied by law, are hereby excluded by Chemical Care.
- 7.5 Chemical Care does not guarantee the accuracy or completeness of any opinions, advice, statements or other information expressed or made available by Chemical Care and Chemical Care makes no representations about the suitability of any opinions, advice, statements or other information expressed or made available by Chemical Care. In no event shall Chemical Care be under any liability for in contract, tort (including in negligence) or otherwise at law to the Customer for claims, expenses, losses (whether direct, indirect, consequential, special or otherwise), damages and costs of any kind resulting from any error or omission contained in any opinions, advice, statements or other information expressed or made available by Chemical Care, whether arising in contract, tort (including in negligence) or otherwise.
- 7.6 Without limiting clause 1.1 a reference to Chemical Care in this clause 7 includes its employees, agents and contractors.
- 7.7 The Customer shall indemnify Chemical Care and keep Chemical Care indemnified against all Liabilities arising from a third party claim against Chemical Care (whether in contract, tort including negligence, equity or under any statute) with respect to the Goods in connection with the provision of the Services. For the purpose of this clause third parties includes (without being limited to) transporters contracted by Chemical Care to transport the Goods.
- 7.8 This contract is at "limited carrier's risk" in terms of the Contract and Commercial Law Act 2017. If despite clause 7.1 and without prejudice to the foregoing, if Chemical Care as contracting carrier or the actual carrier is liable to the Customer for loss or damage to any goods occurring while he is responsible for the goods, such liability is limited to the amount set out in the Contract and Commercial Law Act 2017.

8 CHARGES, INVOICING AND PAYMENT

- 8.1 The Customer will pay the Charges for the Services in accordance with the invoicing and payment terms set out in the Key Terms.
- 8.2 The Charges do not include any costs or charges for transportation or for redelivery of Goods, or any detention, demurrage or other costs and expenses incurred by Chemical Care due to any failure by the Customer to provide any information (including the provision of incomplete or inadequate information), or any other default by the Customer; and all such costs or charges shall be for the sole account of the Customer, and shall be payable on demand by Chemical Care.
- 8.3 Charges shall be calculated on a per week basis ("Storage Week"). Each Storage Week shall commence on a Saturday morning and finish at the close of business on the following Friday evening. Storage for a period of less than one Storage Week shall be charged as for a full Storage Week.
- 8.4 Chemical Care may increase the Charges to the extent that there is any increase in input or compliance costs which increases the cost to Chemical Care of providing the Services (including any increase in CPI, labour costs, or a change in law or the applicable regulations which imposes additional costs on Chemical Care) ("Required Increase"). Prior to implementing any Required Increase, Chemical Care will consult with the Customer and provide at least 30 days notice of the new Charges.
- 8.5 Without limiting clause 8.4, the parties will conduct a review of the Charges no later than 30 days prior to the end of each annual period during the term, and discuss whether any change in the Charges is appropriate in the circumstances. Chemical Care may propose an increase in Charges, and if approved by the Customer (such approval not to be unreasonably withheld), the new Charges shall apply from the beginning of the next annual period.
- 8.6 Timeliness of payment by the Customer of the Charges or any other sum is of the essence under this Agreement. If the Customer defaults in payment on the due date, all money owing to Chemical Care shall immediately become due and payable and Chemical Care shall be entitled to charge interest on such amounts from the due date at the base business overdraft lending rate charged by its primary bank plus a margin of 5 percent per annum (or, if less, the maximum amount permitted by law), calculated daily and compounded monthly from the due date for payment is due until the date payment is received in full.
- 8.7 All Charges are exclusive of GST and any other taxes (excluding income tax) or duties levied or assessed in connection with the supply of the Services, unless otherwise expressly stated. All such additional taxes and duties shall be payable by the Customer.
- 8.8 Where the Customer disputes any invoiced amount, it must notify Chemical Care within 5 business days of receipt of the relevant invoice, and will not be obliged to pay the disputed portion of that invoice until the dispute has been resolved in accordance with clause 9 (Disputes). Where the Customer fails to give such notice within 5 business days, the Customer will be deemed to have accepted the invoiced amount and must pay the invoiced amount in full without any further claim or dispute.
- 8.9 The Customer may not set off any monies claimed to be owed by Chemical Care to the Customer, or any of its related or associated companies, against any sums due to Chemical Care.

9 TERMINATION

- 9.1 Either party (terminating party) may terminate this Agreement immediately by notice in writing upon:
- the other party committing a material breach of this Agreement which is incapable of remedy;
 - the other party failing to remedy any remediable material breach of this Agreement within 30 business days of written notice from the terminating party specifying the breach and requiring its remedy;
 - if the terminating party is Chemical Care, failure by the Customer to meet an obligation to pay Chemical Care by the due date, which is not remedied within 20 business days of the due date; or
 - the commencement of liquidation or insolvency of the other party (except for the purposes of solvent amalgamation or reconstruction) or upon the appointment of a receiver, liquidator, administrator, statutory manager or trustee of property or upon an assignment for the benefit of the other party's creditors, or upon the other party being unable to pay its debts in the ordinary course of business;
- 9.2 Chemical Care may terminate this Agreement on 10 business days' written notice to the Customer without cause.
- 9.3 Chemical Care may terminate this Agreement immediately by written notice to the Customer in the event that:
- the Customer breaches clause 6.6;
 - there is a change in the law which adversely affects Chemical Care's ability to provide the Services or otherwise comply with its obligations under this Agreement; or
 - Chemical Care is unable to obtain or maintain any insurance cover held by Chemical Care on terms acceptable to Chemical Care (in its unfettered discretion).

- 9.4 Upon termination, and subject to clause 9.5, the Customer must as directed by Chemical Care:
- immediately pay all Charges relating to Services provided up to the date of termination; and
 - arrange for the collection of any Goods held by the Chemical Care within 2 business days of termination (time being of the essence); or
 - if the Customer fails to comply with its obligation under clause 9.4(b) (at Chemical Care's sole and unfettered discretion), either:
 - pay the full costs of transportation and delivery of the Goods to the Customer's premises; and /or
 - pay the full costs of transportation, delivery to and disposal of the Goods by any third party.

For the avoidance of doubt, Chemical Care will have no liability whatsoever in respect of the Goods following termination of this Agreement.

- 9.5 In the event that this Agreement is terminated for non-payment or other default by the Customer, without prejudice to any other rights or remedies that Chemical Care may have, the Customer irrevocably and unconditionally authorises Chemical Care to (at Chemical Care's sole and unfettered discretion):
- sell or dispose of the Goods in the manner Chemical Care sees fit, and to retain all proceeds of such sale or disposal as compensation for the default of the Customer; and
 - take all other necessary steps to recover any amounts owed by the Customer, and the Customer will do all things necessary to assist Chemical Care.

In the event that Chemical Care disposes of the Goods, the Customer shall pay all Chemical Care's cost of disposal on demand.

10 DISPUTES

- 10.1 Any dispute or difference which may arise between the parties relating to the interpretation of this Agreement or any matter arising under this Agreement which cannot be settled amicably between the parties within 10 business days of the dispute being notified by either party may be referred to mediation conducted in good faith and carried out by a single mediator, and according to the mediation guidelines, agreed upon by both parties (or in the absence of agreement, determined by the President of the Auckland District Law Society, or his nominee).
- 10.2 The provisions of clause 10.1 will not limit or affect the right of either party to apply to a court at any time for any urgent interim or preliminary relief in respect of the dispute.

11 CONFIDENTIALITY

- 11.1 All information, reports, papers, opinions and files supplied by the Customer to Chemical Care in whatever form shall remain the property of the Customer. Without derogating from the importance the parties attach to the Customer's rights as set out in the preceding sentence, the parties further agree that all information, reports, papers, opinions and files supplied by Chemical Care to the Customer in whatever form shall remain the property of Chemical Care.
- 11.2 Neither Chemical Care nor the Customer shall during, nor after termination of this Agreement, disclose to anyone (other than in the proper discharge of its duties) any confidential information that has come into its knowledge in the course of this Agreement, or use (or attempt to use) such information for its own benefit or the benefit of any other person or organisation.
- 11.3 Upon this Agreement being lawfully terminated, Chemical Care shall return to the Customer all confidential information belonging to the Customer; and the Customer shall return to Chemical Care all confidential information belonging to Chemical Care.

12 TITLE IN THE GOODS

- 12.1 Subject to clause 9.5 and 13, the Goods shall remain the sole and absolute property of the Customer at all times.
- 12.2 In the event that Chemical Care receives a competing claim to title in the Goods from a third party ("Claimant"), then:
- Charges will continue to accrue to the Customer's account;
 - Chemical Care may (at Chemical Care's sole and unfettered discretion):
 - refuse to release the Goods to any party unless the Customer or Claimant provides Chemical Care with sufficient evidence (in Chemical Care's opinion) of an agreement as to title between the Claimant and the Customer or a Court order as to title and then as directed by such agreement or order;
 - sell or dispose of the Goods under clause 9.5.

13 PPSA

- 13.1 The Customer acknowledges that this Agreement constitutes a security agreement for the purposes of the Personal Properties Security Act 1999 ("PPSA") pursuant to which the Customer grants a security interest in any Goods held by Chemical Care to secure performance of its obligations under this Agreement.

- 13.2 The Customer will promptly sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Chemical Care may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and do any other thing that Chemical Care reasonably requires to ensure that Chemical Care has a perfected security interest in the Goods.
- 13.3 The Customer waives its rights to receive a verification statement relating to any security interest created by this Agreement. Chemical Care and the Customer agree that, to the extent permitted by law:
- the Customer will not create, permit or allow to subsist any other security interest in the Goods;
 - the Customer and Chemical Care each contract out of section 109(1) of the PPSA but only to the extent required to enable Chemical Care to exercise all the rights available to it under that section whether or not it has priority over all other secured parties; and
 - the Customer and Chemical Care contract out of the Customer's rights to:
 - receive notice of Chemical Care's proposal to retain collateral under section 120(2) of the PPSA;
 - object to Chemical Care's proposal to retain collateral under section 121 of the PPSA;
 - redeem any collateral under section 132 of the PPSA; and
 - where the Customer has rights in addition to Part 9 of the PPSA, those rights shall continue to apply.
- 14 ASSIGNMENT**
- 14.1 In the event of the proposed sale (including by way of assets or shares), merger, amalgamation or other reorganisation of all or part of the Chemical Care business, Chemical Care may assign or novate any or all of its rights and obligations under this Agreement upon notice to the Customer.
- 14.2 The Customer may not assign any or all of its rights or obligations under this Agreement without the prior written consent of Chemical Care.
- 14.3 Any change in the effective management or control of the Customer or its parent company, through whatever means, will be deemed to be an assignment of this Agreement requiring the prior written consent of Chemical Care.
- 15 NON-WAIVER**
- 15.1 Failure or omission by Chemical Care at any time to enforce or require strict or timely compliance with any provision of the Agreement will not affect or impair that provision in any way for the rights of Chemical Care to avail itself of its remedies either under this Agreement or generally at law.
- 16 ENTIRE AGREEMENT AND VARIATION**
- 16.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, promises and undertakings or understandings of any kind. This Agreement may not be altered, amended or modified except in writing signed by duly authorised representatives of the parties. No other terms and conditions will apply (whether in addition to, or in substitution for, all or part of these Chemical Care general terms and conditions) including any terms or conditions on any order form or other document provided by the Customer, unless Chemical Care has expressly agreed to them in writing.
- 16.2 If any part of this Agreement or any clause or part of clause is held or construed as illegal or invalid the legality or validity of any other provisions hereof shall not be affected. The illegal or invalid provision shall be deemed deleted herefrom or modified to the extent necessary to give full effect to the remaining provisions of this Agreement and all such remaining provisions shall remain in full force and effect.
- 17 FORCE MAJEURE**
- 17.1 Neither party shall be liable for any failure or delay in the fulfilment of all or part of their respective obligations contained in this Agreement which are directly or indirectly attributable to acts of God, to government orders or restrictions or riot, strike, lock-out, fire, flood or any other causes or circumstances reasonably beyond the control of the parties. Upon the occurrence of any of the above events Chemical Care may at its option terminate this Agreement and require the Customer to uplift the Goods forthwith after the payment of all sums owing by the Customer to Chemical Care.
- 18 SPECIAL TERMS**
- 18.1 In the event that any of the Key Terms are inconsistent with any General Term and Condition, then the Key Terms shall prevail to the extent of the inconsistency.
- 19 SUBCONTRACTING**
- 19.1 Chemical Care may sub-contract the provision of all or part of the Services to a sub-contractor that, in the reasonable opinion of Chemical Care, is reputable.
- 20 GUARANTEE**
- 20.1 In consideration of Chemical Care entering into this Agreement at the Guarantor's request, the Guarantor unconditionally and irrevocably guarantees to Chemical Care the due performance and observance by the Customer of all its obligations under this Agreement.
- 20.2 The guarantee in this clause **20** may be enforced at any time on written demand being made by Chemical Care on the Guarantor after the Customer has defaulted in performance or observance of any of the obligations on its part contained in any this Agreement or at any time after the occurrence of a default.
- 20.3 The liability of the Guarantor under clause **20** shall not be affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:
- the granting of time, credit or any indulgence or other concession to the Customer or the Guarantor or any of them or any other guarantor of the Customer or to any other person by Chemical Care;
 - acquiescence, delay, acts, omissions or mistakes on the part of Chemical Care;
 - any transfer of a right of Chemical Care;
 - any variation, extension or renewal of this Agreement; and
 - the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor.
- 20.4 The Guarantor will not be released from the guarantee under this clause **20**, unless:
- the Customer has paid all sums owed to Chemical Care and performed and complied with all of the Customer's obligations under this Agreement; and
 - the Guarantor has discharged all of the Guarantor's obligations under this Agreement .
- 20.5 The guarantee in this clause **20** is a continuing security and is not discharged by any one payment.
- 20.6 Although as between the Customer and the Guarantor the liability of the Guarantor to Chemical Care may be that of surety only, nevertheless as between the Guarantor and Chemical Care the liability of the Guarantor shall be deemed to be the liability of a principal debtor. Accordingly, such liability shall not be affected or diminished, nor shall any security collateral to this Agreement be released or discharged, by any of the preceding matters or by any other act, indulgence or omission which but for this clause would have operated to release the Guarantor wholly or partly from the Guarantor's liabilities to Chemical Care.
- 20.7 As security for the Guarantor's obligations under this Agreement, in consideration for Chemical Care entering into this Agreement, the Guarantor agrees to mortgage any property owned by the Guarantor to Chemical Care and shall forthwith upon demand give and execute in favour of Chemical Care such documentation as is required to enable Chemical Care to obtain a registrable memorandum of mortgage over the Property or any part of that land, such mortgage to be on the terms contained in the latest form of an "all obligations" mortgage produced by the Auckland District Law Society or as otherwise required by Chemical Care and subject to such priority amount as Chemical Care or Chemical Care's lawyers may specify
- 21 RELATIONSHIP**
- 21.1 This Agreement shall not constitute either party as the agent servant or employee of the other party, neither party shall have authority to bind the other party in any respect, nor shall either party hold itself out as having other than the contractual relationship set out in this Agreement.
- 22 NOTICES**
- 22.1 Any notices or communications or demands requiring to be made or served under this Agreement shall be in writing and sent to the recipient at the address or facsimile number on the front page of this Agreement (or any replacement address or facsimile number notified by the recipient). All notices will be deemed to be received:
- if delivered in person, when delivered to the addressee;
 - if sent by registered post, on the 3rd business day after posting if posted in New Zealand, or on the 7th business day if posted to or from a place outside New Zealand, in each case from and including the date of postage;
 - If sent by email, on the date and time at which it enters the addressee's information system as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause or if no such confirmation is sent, then on the date the email is acknowledged by the recipient,
- but if the delivery or receipt is on a day which is not a business day or is after 5.00 pm (addressee's time), it is

deemed to have been received at 9.00 am on the next business day.

23 GOVERNING LAW

23.1 This Agreement is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

24 CREDIT CHECK

24.1 The Customer irrevocably and unconditionally agrees to Chemical Care requesting details of the creditworthiness of the Customer from businesses that provide such information. Chemical Care will keep confidential the results of such credit check information.

24.2 The Customer confirms that its details set out in the Key Terms are true and correct in all respects. The Customer authorises Chemical Care to contact the Trade References and obtain details of the Customer's trading and credit history.

25 INDEMNITIES AND LIMITATIONS OF LIABILITY

25.1 All indemnities and limits on liability under this Agreement are only applicable to the extent they are legally permissible.

26 BUSINESS DAY

26.1 A "business day" under this Agreement is any day except Saturday, Sunday, a public holiday in the Auckland region or a day falling during the period commencing (and including) 24 December and expiring on (and including) 5 January.

<p>Signed for on behalf of NZ Chemical Care & Storage Limited:</p>	<p>Signed for on behalf of _____:</p>
<p>_____</p>	<p>_____</p>
<p>By:</p>	<p>By:</p>
<p>Position:</p>	<p>Position:</p>
<p>Date:</p>	<p>Date:</p>
	<p>Signed for by the Guarantor: _____</p>
	<p>_____</p>
	<p>By:</p>
	<p>Position:</p>
	<p>Date:</p>