

Vicchem Terms and Conditions

HAYSPRAY Products



1. These Terms and Conditions apply and are incorporated to each contract for the supply of goods (hereinafter "goods") from Victorian Chemical Company Proprietary Limited A.B.N. 36 004 188 863 ("Vicchem") to a customer ("Customer").

2. A contract for the supply and purchase of goods will be formed on these Terms and Conditions immediately upon Customer acceptance of a valid Vicchem issued quotation or when a Customer requests the supply of goods and upon Vicchem: (i) agreeing to supply the goods or (ii) actually providing the goods to the Customer.

3. Unless otherwise agreed in writing, the Customer must pay a 20% deposit of the goods at the time of order with the balance to be paid prior to despatch of the goods. The Customer must pay interest at a rate of 12% per annum on all overdue amounts and if any monies are outstanding Vicchem may suspend any further deliveries of goods. Vicchem is entitled to charge the Customer a reasonable storage charge if either delivery instructions are not provided by the Customer within 14 days of request or alternatively if the Customer fails to arrange for collection of the goods within 14 days of the agreed pick up date. The Purchaser shall not be entitled to make any deduction from the price of the goods in respect of any set-off or counter claim.

4. Quotations by Vicchem are open for the period stated therein, or if no period is specified, within 14 days of the quotation date.

5. If the Customer requests special packaging, the cost of the materials and/or special packaging will be at the Customer's expense regardless of whether that cost has been omitted from any quotation.

6. Where the Customer changes their mind concerning a purchase, goods supplied to a Customer shall not be accepted for return and credit or exchange without the prior approval of Vicchem (at its sole discretion).

7. Subject to any law to the contrary, until the Customer has paid all sums outstanding in relation to any goods:- (a) Vicchem will retain legal and beneficial title in and full ownership of the goods; (b) if the goods are in the Customer's possession, the Customer must store the goods so that they are clearly identifiable as the property of Vicchem; (c) Vicchem may call for and recover possession of the goods (for which purposes Vicchem's employees or agents may enter the Customer's premises and take

possession of the goods without liability to the Customer) and the Customer must deliver the goods to Vicchem if requested to do so by Vicchem at the sole expense of the Customer; (d) the Customer may, in the ordinary course of the Customer's business, sell the goods to a third party, provided that the Customer holds the proceeds of sale on trust for Vicchem, and accounts to Vicchem for those sums if requested to do so by Vicchem; (e) appropriate records shall be kept by the Customer of any goods owned by Vicchem. Without limiting the foregoing, for the avoidance of doubt, until goods are paid for in full, the relationship between Vicchem and the Customer shall be fiduciary and the Customer shall hold the goods as bailee for Vicchem.

8. Until the Customer has paid all sums owing or outstanding in relation to the goods, the supply of goods to the Customer by Vicchem under this Agreement gives rise to a Purchase Money Security Interest ("PMSI") in the goods in favour of Vicchem, and Vicchem may register a Financing Statement in respect of its PMSI pursuant to this clause on the Personal Property Securities Register. Vicchem is not obliged to give, and is excluded from giving, any notice or providing any documents under the Personal Property Securities Act 2009 (Clth)(as amended)) ("PPSA")(including notice of a financial or verification statement unless the notice is required by the PPSA and cannot be excluded). (Terms used in this clause have the meaning given to them in the PPSA.)

9. The risk in any goods supplied to, or sold to a Customer passes to the Customer:- (a) if Vicchem delivers the goods to the Customer's premises - at the time of delivery; or (b) otherwise, at the time the goods are collected by or on behalf of the Customer.

10. Vicchem will make all reasonable efforts to have goods available for pickup by the Customer on the date(s) agreed between the parties, however if for any reason pickup is not made on the agreed dates, then, subject to any law to the contrary:- (a) Vicchem will not be liable to the Customer; and (b) the Customer will not be entitled to cancel any order or contract as a consequence of Vicchem's failure to have the goods available for pickup on the agreed date(s). Time for completion, delivery, dispatch, shipment or arrival of the goods or for the tender of any documents is not of the essence. In the event of production of the goods or any part thereof being hindered or impaired or ceasing for any cause whatsoever outside the reasonable control of the Vicchem, Vicchem may notify the Customer that it is unable to fulfil the applicable order or contract and may cancel the order or contract without being under any liability whatsoever.

11. The Customer must notify Vicchem within seven (7) days of pickup of any damage or defects to goods delivered. Failure to so notify shall disentitle the Customer to any remedy in respect to the damage or defects provided that nothing in this clause 11 effects a Customers rights under law in relation to damaged or defective goods.

12. In the purchase of any goods from Vicchem, as permitted by law, the Customer acknowledges it does not rely upon any statement, representation, warranty, condition, advice, recommendation, information, assistance or service provided or given by Vicchem or anyone on its behalf in respect of the goods supplied by Vicchem to the Customer

(other than the Limited Warranty), and the Customer relies upon its own expertise as to the condition, quality, application, suitability or fitness for their ordinary or any special use or purpose of the goods the subject of any contract entered into with Vicchem. Without limiting the foregoing, it is the Customer's responsibility to ensure that goods supplied by Vicchem are the correct goods for the Customer's application. The purchaser and/or user of the goods are responsible for determining the suitability of chemicals and other liquids for any application and the application methods and the resulting environmental effects. Vicchem provides no warranty as to:- (a) the suitability of any chemicals or other liquids for any application; (b) the application methods; or (c) the environmental effects, which may result from the use of the goods. As permitted by law, Vicchem is under no liability for: (a) loss of damage or any Claims arising from the use of any liquids, chemicals or mixtures in the goods; (b) any application; (c) the application methods; or (d) any environmental effects, which may result from the use of the goods. Where Vicchem provides information as to any performance, volumes, and/or capacity figures, these are estimates only. Vicchem is not liable for damage for failure to meet the estimated figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable for such figures.

13. As permitted by law, Vicchem shall not be liable in any circumstances for any technical advice or assistance given or rendered by it to the Customer. The parties acknowledge that some goods are provided by Vicchem in accordance with information supplied by the Customer ("Customer Information"). Vicchem will not be responsible for any defects in the goods provided by Vicchem which are the result (in whole or in part) of defects, omissions or errors in the Customer Information.

14. Where goods are made to customer specifications, Vicchem's price is based on estimates of the quantities required in accordance with the specifications, drawings or other specification as supplied by the Customer. If the quantities estimated by Vicchem in a quotation needs to be adjusted, then any such increase or decrease shall be adjusted on a unit base according to the unit price set out in the quotation.

15. Vicchem is not the manufacturer of the goods and the Customer acknowledges that Vicchem has no liability or responsibility as manufacturer. However, the Australian Consumer Law ("ACL") requires Vicchem to disclose the following:- In Australia, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. (In these Terms and Conditions the Australian Consumer Law guarantees are called "Prescribed Terms").

16. Except for the Prescribed Terms (if applicable), Vicchem gives the Limited Warranty (as hereinafter referred) in place of all excludable warranties, conditions, terms, undertakings and obligations as implied by custom, the general law or

statute (which are excluded and shall not apply). However, to the extent permissible by law, if a Claim is made under the Prescribed Terms and/or the Limited Warranty where the goods are not those of a kind ordinarily acquired for personal, domestic, or household use or consumption as defined in the ACL, the liability of Vicchem for any Claim or for a breach of the Prescribed Terms (other than a breach of sections 51, 52 or 53 of the ACL) and/or breach of the Express Warranty will be limited, at the option of Vicchem, to the following agreed remedies: (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; (d) the payment of the cost of having the goods repaired. Without limiting the foregoing, subject to the Prescribed Terms and save for the Express Warranty, Vicchem:- (a) shall be under no liability for any defect or defects (including any defect caused by the loading of goods) in, or deterioration or failure of, the goods or any part thereof (or any goods supplied with the goods or any part thereof) whether due to design, workmanship or materials or to any cause whatsoever unless the same is due to the negligence or wilful default of Vicchem or its employees or agents; and (b) shall be under no liability whatsoever for any failure of the goods to correspond with any description relating to the quantity, dimensions, weight, place of shipment or other statements relating to transport of the goods (other than in relation to a substantial ingredient of the identity of the goods).

17. (a) The goods supplied under these Terms and Conditions come with the express warranty as set out in this clause and as set out in any warranty card issued with the goods ("the Express Warranty"). The Express Warranty applies in addition to the Prescribed Terms. In the case of Interlink sprayers goods (including the Hayspray range) the Express Warranty applies for a period not exceeding 12 calendar months after the goods are paid for by the Customer ("the Warranty Period").

(b) Under the Express Warranty subject to the provisions of clause 17 and any other applicable Terms and Conditions, Vicchem will make good any defects that are caused by faulty materials within the Warranty Period by either replacing or repairing the goods (at Vicchem's option) provided however that none of the Warranty Exclusions apply.

(c) Warranty Exclusions means any one or more of the following:- (i) fair wear and tear to the goods, including, but not limited to, fair wear and tear to chains, belts, nozzles, filters, polyethylene bushes, brake pads, valve O-rings, liquid pump valves, diaphragm and seals (and also including normal wear of moving parts or components affected by moving parts); (ii) diaphragms, hoses and pressure gauges are not covered by the Express Warranty (iii) the goods have been misused, maltreated, inappropriately or incorrectly operated, stored, maintained, adjusted or calibrated; (iv) the goods have not used and maintained in accordance with Vicchem's and/or the manufacturer's specifications, instructions and/or directions for use and/or storage (as provided from time to time) and/or in accordance with any special instructions provided by Vicchem (the "Instructions for Use");(v) the goods have been modified without Vicchem's approval; (vi) non Vicchem or non-manufacturer authorised and approved accessories are used in conjunction with the goods; (vii) (where applicable) the seals on the goods have been broken; (viii) leakage or

contamination has been caused to the goods; (ix) the sites on which the goods are operated have not been correctly prepared for such use; and (x) there has been a failure of regular inspection of the goods and/or a failure to properly repair any damage to the goods prior to the goods being used, operated, moved, or driven and/or a failure of the tanks of the goods to be properly filled for each use; (xi) the goods have not been used in compliance with the laws or regulations relating to the goods and/or their use and/or the operation; and (xii) a failure to comply with any provision of clause 17 and/or any other applicable clause of these Terms and Conditions;

(d) The Customer is responsible for the cost of returning the defective goods or any damaged part of the goods to Vicchem's authorised service company if the goods fall within the Express Warranty (and none of the Warranty Exclusions apply).

(e) If goods or any part thereof are not manufactured by Vicchem, (including engines, engine accessories, tyres, tubes, transmissions, differentials, batteries, radios, transfer cases and UHF's), the Customer will accept the guarantee of the manufacturer thereof which is only the guarantee given to the Customer in respect of the goods or that part.

(f) If the hydraulic system is defective, Vicchem shall replace defective parts in accordance with clause 17 of these Terms and Conditions, provided that the failure of the part was not related to contamination within the hydraulic system, but Vicchem will not be liable for labour in the case of repairing hydraulic system defects.

(g) Only Vicchem and/or manufacturer authorised and approved accessories, consumables, hardware or software are to be used in conjunction with the goods;

(h) Only Vicchem and/or manufacturer authorised modifications to the goods (or any part thereof) are permitted;

(i) The Customer must maintain full details of all inspections, repairs and maintenance all of which must be produced at the time of making any claim for defects to the goods;

(j) All warranty-related repairs must first be approved by Vicchem and/or the manufacturer;

(k) The benefit of the Express Warranty provided under these Terms and Conditions applies only to the customer and is not transferable to any other party.

(l) The Express Warranty provided under these Terms and Conditions does not extend to second hand or used goods that may be sold Vicchem.

18. To the extent permissible by law, Vicchem shall not be responsible for any defects in goods or any Claim(s) made by a Customer where: (a) such defect is caused or in any way contributed to by the Customer's failure to comply with these Terms and Conditions; (b) where any of the Warranty Exclusions apply; and/or (c) there are unpaid monies owing to Vicchem by the Customer in connection with the applicable goods.

19. To the extent permissible by the law, and subject to these Terms and Conditions, in no circumstances will Vicchem be liable to the Customer or others for any indirect, incidental, special and/or consequential losses, liability, costs or damages; any loss of income, loss of business opportunity, loss of revenue, loss of profits, any labour costs, injury or damage or death to persons or property.

20. To the extent permissible by law, Vicchem shall not be liable for and the Customer shall indemnify and keep Vicchem indemnified against any Claim, including but not limited to for loss, damage, injury or death to any person or property directly or indirectly occasioned by or arising from the use or operation or possession of the goods or any part of the goods or from the negligence, recklessness or wilful default (including the use of the goods otherwise than in accordance with the Instructions for Use) or misuse by or on the part of the Customer or any other person other than Vicchem's personnel and this indemnity shall extend to any costs and expenses incurred by Vicchem.

21. For clarity, nothing in these Terms and Conditions limits, excludes or modifies or purports to limit, exclude or modify the rights provided under the ACL, or similar consumer protection law, where it would be illegal to do so.

22. If warranty service is required the Customer must notify Vicchem immediately. Any and all warranty claims relating to goods made must be made to the Vicchem Accounts Administrator on 03 9301 7000 or via email at baleboostcentral@vicchem.com and the Customer must explain the basis of its claim. Subject to the law, any goods the Customer believes are defective must be returned to Vicchem at the Customer's expense. The Customer must, to Vicchem's satisfaction provide proof of purchase to be able to make any warranty claim (or any claim for defects in the goods). Save for cost of return as hereinbefore described, any cost or expense associated with bringing a claim under this clause will be borne by the party who incurs the cost or expense. The warranty is given by Victorian Chemical Company Proprietary Limited A.B.N. 36 004 188 863; phone 03 9301 7000.

23. An amount payable by the Customer, in respect of the supply by Vicchem which is taxable supply under the GST Law, unless specifically expressed to the contrary, represents the GST exclusive value of the supply and the Customer as the recipient of the supply must, in addition to the sums specified in the applicable order or agreement as payable, pay to Vicchem the GST payable in respect of the supply. In this clause, the following words have the following meaning:- (a) "GST" means a good and service tax including under the GST Law; (b) "GST Law" includes any law introducing, related to or in furtherance of, a GST - including under A New Tax System (Goods and Services Tax) Act 1999 (as amended). In the event that Vicchem is obliged to make payment of all or any tariff(s), excise(s), or customs duty(s) or other tax(s) on their supply of goods to the Customer (the "Charges"), then the Customer must also, in addition to the sums specified in the applicable order or agreement as payable, pay to Vicchem an amount equivalent to the applicable Charges.

24. The Customer shall at all times indemnify and hold harmless Vicchem and its officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses on a solicitor/client basis) or liability reasonably incurred or suffered by any of those indemnified arising from any Claim against those indemnified where such loss or liability was caused by:- (a) a breach by the Customer of these Terms and Conditions; or (b) any wilful, unlawful or negligent act or omission of the Customer or its employees, servants or agents.

25. Vicchem will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond Vicchem's reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of Vicchem's suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery or import or export regulations or embargoes.

26. It is the Customer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and the use of the goods and, where information is supplied to the Customer on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, contractors, visitors and customers. Without limiting the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of goods into storage and to comply with all and any directions given by Vicchem concerning storage of goods.

27. In these Terms and Conditions:- "Claim(s)" means all and any claims, actions, disputes, demands, proceedings, interest, costs, loss, expenses, damages, and debts and liabilities of any kind (including prospective or contingent) of whatever nature and however arising (whether wilfully or otherwise and whether for fundamental or non-fundamental breach of contract, in tort (including negligence) or for breach of any statutory provision).

28. The Agreement formed under these Terms and Conditions and all contracts made between Vicchem and the Customer are made in the State of Victoria and the parties agree to submit all disputes arising between them to the courts of Victoria. These Terms and Conditions may only be varied with the written consent of a current director of Vicchem. If any term or part of a term of these Terms and Conditions is illegal or unenforceable it may be severed from these Terms and Conditions and the remaining terms or parts will continue in force. This document contains and represents the entire agreement between Vicchem and the Customer (and supercedes and excludes all prior and other discussions and representations and arrangements relating to the goods), save to the extent of the terms contained in any credit application and/or consignment agreement (if any) made by the Customer and Vicchem, the terms of which shall be deemed to be incorporated into these Terms and Conditions and to the extent that there is any inconsistency between these Terms and Conditions and the credit application and/or consignment agreement, the terms and conditions of the credit application and/or consignment agreement shall prevail.