

Nexans Australmold Trading Terms

1. Interpretation

1.1 In these conditions:

Nexans Australmold means Nexans Australmold, a division of Olex Australia Pty Limited (A.B.N 61 087 542 863) of Building 2/69 Dalton Road, Thomastown VIC 3074.

Consequential Loss means:

- (a) any loss of use, data, profit, bonus, production, income, business, anticipated savings or reputation;
- (b) increased project cost;
- (c) loss of an economic or financial nature; and
- (d) special, indirect, incidental or consequential loss,

whether such loss arises directly or indirectly.

Customer means the customer named in the purchase order;

Defect means any defect of workmanship or materials which is not in accordance with the specification described in the purchase order or other requirements of these conditions;

GST means the goods and services tax that applies in accordance with a *New Tax System (Goods and Services) Act 1999* (Cth).

Insolvency Event means, if a Customer:

- (a) informs Nexans Australmold or its creditors generally, that it is insolvent or unable to proceed with its obligations in accordance with the contract, for financial reasons;
- (b) passes a resolution that it be wound up or allows a winding up order to be made against it (unless such winding up is solely for the purpose of reconstruction or amalgamation, the terms of which have been previously approved by the other party);
- (c) becomes insolvent or bankrupt or has a receiving order made against it or enters into a composition or deed of company arrangement with its creditors or any class of them;
- (d) allows a manager, controller, receiver, liquidator or an administrator to be appointed or carries on business under a manager, controller, receiver or administrator.

Products means the products which Nexans Australmold has contracted to supply to the Customer.

Price means the price quoted (if any) and the price appearing on the invoice, whichever is higher.

2. Purchase Orders

2.1 A quotation given by Nexans Australmold to the Customer is not an offer capable of acceptance by the Customer. A contract between Nexans Australmold and the Customer only arises in accordance with clause 2.2.

2.2 Each purchase order constitutes an offer by the Customer to acquire the Products from Nexans Australmold on these conditions to the exclusion of all other conditions. A contract is made only when Nexans Australmold accepts a purchase order at its office, which may be by

supplying all or part of the Products ordered. Nexans Australmold may reject any order at its discretion.

3. Status of Conditions

3.1 These conditions replace all previous conditions imposed by Nexans Australmold and apply to the exclusion of any conditions of purchase used by the Customer even if they form part of the Customer's purchase order. No variation of these conditions binds either party unless confirmed in writing by Nexans Australmold.

4. Price

4.1 Unless Nexans Australmold states otherwise, the Price of the Product is the price quoted (if any) and the price appearing on the invoice, whichever is higher.

4.2 The Price of the Product includes Nexans Australmold's standard domestic packaging. Nexans Australmold may make additional charges for export packaging.

4.3 Quotations are subject to change at any time prior to acceptance of the purchase order by Nexans Australmold.

4.4 Unless expressly stated otherwise, the Prices of Products do not include any sales tax, GST or similar taxes or other domestic or foreign government duties, charges and taxes. Where applicable, those duties, charges and taxes will be added to the Price or will be otherwise payable as a separate charge to be paid by the Customer.

4.5 Despite any other provision of the contract, if adverse changes in market conditions occur during the term of this contract which were not foreseeable at the time the purchase order was accepted by Nexans Australmold, which changes would result in hardship to Nexans Australmold if the terms of the contract, including Price, were maintained, the Customer agrees to meet on Nexans Australmold's request to revise the said terms in a manner that is equitable to both parties and which takes into account the changes in market conditions.

5. Payment and Credit

5.1 Nexans Australmold shall invoice upon delivery of the Products and payment shall be made by the Customer within 30 days of the date of the invoice.

5.2 Nexans Australmold reserves the right to require payment of a deposit prior to delivery.

5.3 On request, the Customer shall provide a bank guarantee in terms and for such amount as acceptable to Nexans Australmold as security for performance of its obligations under this contract. Nexans Australmold shall release and return the security within 14 days of payment of the Price.

5.4 Nexans Australmold may invoice progressively where Products are delivered in instalments.

6. Risk and Title in Products

6.1 Risk in Products passes to the Customer on delivery of the Products to the Customer.

6.2 The Customer acknowledges and agrees that Nexans Australmold holds a purchase money security interest for the purpose of the *Personal Property Securities Act 2009* (Cth) until full payment has been made for the Products.

6.3 Title to the Products does not pass until payment in full in cleared funds of all money owed to Nexans Australmold for the Products and all other money owed to Nexans Australmold by the Customer.

Until title to the Products passes to the Customer, the Customer possesses the Products as fiduciary bailee and agent for Nexans Australmold and is only authorised to sell the Products in the ordinary course of business (which does not include sale for less than cost or on conditions). On taking delivery of the Products, the Customer must keep the Products separate from other Products on the Customer's premises and mark them to show clearly that the Products belong to Nexans Australmold.

If the Customer fails to comply with any of these conditions or Nexans Australmold in its absolute discretion considers that the Customer is in the financial difficulties, Nexans Australmold:

- (a) has the right to immediate possession of the Products and the Customer irrevocably authorises Nexans Australmold to enter any premises occupied by the Customer at any time (forcibly if necessary) in the Customer's name, without notice to any person, and take the Products;
- (b) may retain all money paid on account of the Products;
- (c) may cease delivery of the Products; and
- (d) may recover from the Customer all losses (including loss of profits) without affecting any of its other rights and without being liable in any way to any person.

6.4 Until payment in full for the Products and of all other amounts owing by the Customer to Nexans Australmold, if the Customer sells the Products, the Customer must:

- (a) deposit all proceeds of sale in a separate and identifiable bank account;
- (b) not mix the proceeds with any other money;
- (c) account to Nexans Australmold for the proceeds; and

Nexans Australmold may trace all proceeds of sale of the Products received by the Customer through the relevant account or any other account maintained by the Customer.

6.5 If, at the time Nexans Australmold seeks to recover the Products, they have been incorporated in any

product:

- (a) Nexans Australmold and the Customer will be treated as owners of that product as tenants in common in proportion to their respective contributions; and
- (b) if relevant, the Customer will be presumed to have disposed of products not incorporating the Products ahead of products incorporating the Products.

6.6 Clauses 6.3, 6.4 and 6.5 are not intended to create a charge over the Products or any book debts. To the extent that any part of clauses 6.3, 6.4 and 6.5 are construed as creating a charge, the offending words are to be treated as deleted.

6.7 Clauses 6.3, 6.4 and 6.5 do not purport to confer on Nexans Australmold any contractual rights but only serve as confirmation of Nexans Australmold's rights at law and in equity.

7. Changes in Design or Construction

7.1 Nexans Australmold reserves the right in its sole discretion to make any changes it deems desirable in the design and manufacture of the Products provided that the Products as changed meet the performance specifications, if any.

7.2 Nexans Australmold will be under no obligation to proceed with a change requested by the Customer unless or until a change order acceptable to both parties is signed by Nexans Australmold and the Customer.

8. Limitation of Liability

8.1 The *Trade Practices Act 1974* (Cth) (and other legislation) may imply certain conditions and warranties into this contract that cannot be excluded or modified. This contract does not exclude or modify any of those conditions or warranties if to do so would contravene that law or make any part of this contract void.

8.2 Subject to clause 8.1, Nexans Australmold excludes all warranties and conditions that may be implied into this contract and limits its liability for breach of any implied condition or warranty that cannot be excluded to (at its option) the repair or replacement of those Products or reimbursement of the cost of having those Products repaired or replaced.

8.3 Nexans Australmold will use its reasonable endeavours to achieve delivery of the Products by the date nominated in the purchase order for delivery but Nexans Australmold shall have no liability to the Customer for delay in delivery of the Products nor will the Customer be entitled to claim against Nexans Australmold in respect of loss or damage caused by delay in delivery.

8.4 (a) Subject to clause 8.4(b) and (c), to the extent permitted by law, Nexans Australmold's liability to the Customer:

- (i) under, or arising out of, or in connection with the supply of the Products;
- (ii) otherwise at law or in equity including:
 - (A) by statute to the extent permitted by law;
 - (B) in tort for negligence or otherwise, including negligent misrepresentation;
 - (C) in contract (including by way of indemnity and liquidated damages); and
 - (D) on any other basis whatsoever,

shall be limited to one of the following, as determined by Nexans Australmold:

- (iii) replacement of the defective Products; or
- (iv) payment that shall not exceed 20% of the amount paid to Nexans Australmold for the Products.

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- (b) The limitation in clause 8.4(a) does not apply to claims in respect of personal injury to, illness or death of persons;
 - (c) Despite any other provision of the contract, to the extent permitted by law, Nexans Australmold has no liability to the Customer nor will the Customer be entitled to claim against Nexans Australmold in respect of Consequential Loss:
 - (i) under, arising out of, or in connection with the supply of the Products;
 - (ii) otherwise at law or in equity including:
 - (A) by statute to the extent permitted by law;
 - (B) in tort for negligence or otherwise, including negligent misrepresentation;
 - (C) in contract (including by way of indemnity); and
 - (D) on any other basis whatsoever.
 - (d) This clause shall survive termination or expiry of the contract.

8.5 The Customer acknowledges that it has not relied on any representation made by Nexans Australmold which has not been expressly stated in these conditions.

8.6 The Customer indemnifies Nexans Australmold against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by Nexans Australmold:

- (a) in connection with any act or omission of the Customer including, but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the Products; or
- (b) as a result of any claim made or action brought in connection with the Products or their use, other than a claim or action brought by the Customer under these conditions or a condition or warranty implied by law which is not excluded by these conditions.

9. Delivery and Transport

9.1 Any delivery date stated in the purchase order or otherwise notified is an estimated date only. The Customer acknowledges that it has not relied on any representation made by Nexans Australmold in relation to the date for delivery.

9.2 Delay in delivery of the Products shall not entitle the Customer to terminate the purchase order and the Customer shall not be excused from paying for the Products by reason of any such delay.

9.3 Nexans Australmold reserves the right to deliver the Products in instalments.

9.4 Unless the contract specifies the means by which Products are to be transported, Nexans Australmold will choose the means of transport.

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- 9.5** Nexans Australmold is not obliged to agree to any request to store the Products or to postpone the date for delivery. Nexans Australmold may agree to such a request on terms, including immediate payment of some or all of the Price and payment of reasonable storage charges.
- 9.6** If Nexans Australmold has requested a bank guarantee under clause 5.3, delivery shall not occur until a bank guarantee in terms acceptable to Nexans Australmold has been submitted.
- 9.7** Despite any other provision of the contract, Nexans Australmold shall have no liability to the Customer for non delivery or delay in delivery of the Products, nor will the Customer be entitled to claim against Nexans Australmold in respect of loss or damage caused by non delivery or delay in delivery:
- (a) under, arising out of, or in connection with this contract;
 - (b) otherwise at law or in equity including:
 - (i) by statute to the extent permitted by law;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) on any other basis whatsoever.
- 9.8** Clause 9.7 shall survive termination or expiry of the contract.

10. Force Majeure

- 10.1** Any notified times for delivery are estimates only and Nexans Australmold shall not be considered in default in the performance of its obligations under the contract, or be liable to the Customer for any failure to deliver or for delay in delivery of the Products to the extent that such failure or delay is caused by an event of Force Majeure.
- 10.2** In the event of a delay arising from an event of Force Majeure, the time of performance of contract shall be extended by a period of time reasonably necessary to overcome the effect of the delay.
- 10.3** For the purposes of clause 10, 'Force Majeure' means:
- (a) war, hostilities, blockade, insurrection, invasion, act of foreign enemies;
 - (b) rebellion, terrorism, sabotage, strikes, revolution, insurrection, military or usurped power, or civil disturbance;
 - (c) breakdown of machinery, flood, bushfire, washout, earthquake, landslide, cyclone, hurricane, typhoon, tidal wave or volcanic activity;
 - (d) pandemic, including any future waves of the Covid 19 pandemic;

or any other cause whether similar or dissimilar to any of the causes or categories of causes described above and which is beyond the reasonable control of Nexans Australmold.

11. Warranties

- 11.1** Nexans Australmold warrants the Products to be free of Defects for a period of twelve (12) months from the date of delivery. As to all apparatus and accessories not manufactured by Nexans Australmold which are components of or ancillary to the Products furnished by Nexans Australmold, Nexans Australmold's only obligation shall be to obtain for the Customer such warranties as are available from the vendors thereof for such period, if obtainable by Nexans Australmold without payment by Nexans Australmold of additional consideration.
- 11.2** During the warranty period the Customer may give Nexans Australmold a notice identifying a Defect in the Products. The defective Products shall be preserved intact and made available for inspection by Nexans Australmold. Within a reasonable period of receipt of the notice Nexans Australmold may, at its option replace or repair the Products. The Customer acknowledges that the replacement or repair of defective Products or defective parts of Products shall be the Customer's sole remedy.
- 11.3** On written request from Nexans Australmold, Products which have been replaced pursuant to clause 11.2 shall be made available to Nexans Australmold and shall be the property of Nexans Australmold.
- 11.4** The Customer acknowledges and agrees that:
- (i) images in brochures provided by Nexans Australmold and on the Nexans Australmold website; and
 - (ii) samples provided by Nexans Australmold,
- may not provide an accurate representation of the colour, pattern or quality of the Products due to limitations in colour reproduction, the size of the sample, changes in technical specification, technical errors and human error. To the extent permitted by law, Nexans Australmold makes no representation that the Products will match any image or sample provided.
- 11.5** No Products may be returned to Nexans Australmold without the prior written consent of Nexans Australmold. Such written consent shall not imply any admission by Nexans Australmold that the Products returned are defective. A restocking fee may apply under clause 13.2(d). If Products are returned without the prior written consent of Nexans Australmold, Nexans Australmold may return those Products to the Customer at the Customer's expense and risk. Any transport costs incurred by the Customer in returning product to Nexans Australmold will be at the Customer's expense and risk.
- 11.6** Despite any other provision of the contract, to the extent permitted by law Nexans Australmold has no liability to the Customer nor will the Customer be entitled to claim against Nexans Australmold for loss and damage incurred or sustained by the Customer arising out of or in connection with any Defect, including the cost of rectification of Defects, searching for the cause of any Defect, dismantling, removal, transport, repair, reinstallation, retesting and similar costs:
- (a) under, arising out of, or in connection with the contract;
 - (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise;

on any other basis whatsoever.

11.7 Clause 11.6 shall survive termination or expiry of the contract.

11.8 The Customer agrees that no warranty is given under clause 11.1 in respect of Defects caused by:

- (a) failure to handle, store, install, maintain or repair the Products in an appropriate manner after delivery;
- (b) failure to use the Products in the manner for which they were designed;
- (c) normal wear and tear; and
- (d) repair or alterations to the Products made without the prior written consent of Nexans Australmold.

12. Sunset Date

12.1 All claims under clause 11.2 concerning Defects in the Products must be notified within 1 year from the date of delivery of the Products.

12.2 Any other claims arising out of or in connection with the Products and this contract shall be notified in writing to Nexans Australmold within 30 days from the date of delivery of the Products.

12.3 To the extent permitted by law, Nexans Australmold shall have no liability to the Customer for claims under clause 11.2 or other claims notified after the dates described in clause 12.1 or clause 12.2 as the case may be.

13. Payment

13.1 Payment

- (a) All invoices are due and payable in full by the 30th day after the date of invoice. Time is of the essence for payment.
- (b) The Price and any other fees or amounts payable under this contract are exclusive of GST.
- (c) The Customer must pay interest on any overdue invoice at 2% above the Westpac Banking Corporation reference lending rate.
- (d) The Customer must pay all costs and expenses (including legal costs and mercantile agents fees) which Nexans Australmold may incur in attempting to recover any overdue amounts.

13.2 Fees

- (a) Credit Card Fee
Unless otherwise agreed in writing, payments made by credit card may be subject to a credit card administration fee of 3% (exclusive of GST) of the Price.
- (b) Dishonour Fee
Where a cheque or payment of a credit account is dishonoured by a Customer's bank, a fee of \$50.00 (exclusive of GST) shall apply.

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- (c) Packing and Handling Fee
Where the value of an Order is less than the Minimum Order Value (MOV) of \$750 excluding GST, a packing and handling fee of \$150 will be applicable to that order.
 - (d) Restocking Fee
 - (e) Returned orders may be subject to a restocking fee of up to 15%.

13.3 Set Off

The Customer acknowledges that:

- (a) Nexans Australmold may set off any credit amount owing to the Customer against any debit due by Nexans Australmold to the Customer;
- (b) the Customer is not entitled to withhold payment of any money in respect of any set off or claim the Customer might have against Nexans Australmold.

14. Cancellation or Variation of Order

14.1 The Customer may not:

- (a) terminate an order; or
- (b) reduce the quantity of Products to be supplied under an order; or
- (c) direct Nexans Australmold to delay the date for delivery of the Products under an order,

without Nexans Australmold's written consent, which consent may be withheld in Nexans Australmold's discretion.

14.2 Any request from the Customer to terminate the order or vary the order as described in clause 14.1 shall be in writing and shall not be effective until the date on which Nexans Australmold gives consent (unless an earlier date is otherwise agreed).

14.3 If an order is terminated or the quantity of the Products to be supplied is reduced, the Customer shall pay Nexans Australmold reasonable and proper charges which shall include:

- (a) a portion of the Price reflecting the amount of work completed up to the date on which the termination (or variation) takes effect;
- (b) any incurred or committed costs incurred by Nexans Australmold;
- (c) additional expenses incurred by reason of termination (or variation) of Nexans Australmold's agreements with its suppliers and subcontractors, including but not limited to, the financing costs related to raw materials in inventory.

14.4 The entitlement to payment described in clause 14.3 is in addition to and without prejudice to Nexans Australmold's other rights.

15. Default by Customer

15.1 If the Customer:

- (a) fails to pay for the Products on the due date; or
- (b) otherwise breaches this contract and fails to rectify such breach within seven (7) days notice; or

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- (c) cancels delivery of the Products without express approval of Nexans Australmold; or
 - (d) suffers an Insolvency Event,

Nexans Australmold reserves the right to:

- (e) resell the relevant Products; and
- (f) terminate the contract.

16. Termination or Suspension for Convenience

16.1 Nexans Australmold may terminate this contract or suspend deliveries of the Products at its convenience. Upon termination or suspension of deliveries for convenience, Nexans Australmold shall not be liable for any claim, loss, damage or expense suffered or incurred by the Customer.

17. General

17.1 This contract and the supply of Products by Nexans Australmold to the Customer are governed by and will be construed in accordance with the laws of the State of Victoria.

17.2 The parties irrevocably submit to the authority of the Courts having jurisdiction in the State of Victoria.

17.3 The Vienna Convention for the International Sale of Goods is hereby excluded.

17.4 These conditions together with any purchase order issued in connection with this contract constitutes the entire agreement between the parties and all previous dealings, representations and arrangements are hereby expressly excluded. To the extent of any inconsistency, these conditions take priority over the terms of any purchase order.

17.5 The Customer may not assign its rights or obligations under the contract between Nexans Australmold and the Customer for the supply of Products without Nexans Australmold's prior written consent, which Nexans Australmold may give or refuse in its sole discretion.

17.6 If any part of this contract is held to be void or unlawful, this contract will be read and enforced as if the void or unlawful provisions have been deleted.

17.7 No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on a party granting a waiver unless made in writing signed by the party granting the waiver.