



**KODEX CONSTRUCTION CHEMICALS**

Unit 32, 45 powers road, Seven Hills  
Telephone: 02 9099 1265  
Technical: technical@kodex.com.au  
Email: info@kodex.com.au  
Web: www.kodex.com.au

**Application for Credit**

**Nature of the Applicant Organisation (tick 1 box):**

Sole  Trader  Partnership  Company  Trust  Other : .....

Name of Applicant(s): ..... ABN: .....

Trading Name: (if different) : .....

Registered Office/Principal Place of Business: .....

..... Post Code: .....

Delivery Address (if different) .....

Previous Address Details(if less than 2 years) .....

Phone: ..... Fax: .....

Mobile: ..... Email: .....

**Details of SoleTrader/Partners(if Partnership) Details of Directors (if a Company)**

1. Full Name: ..... 1. Full Name:.....

Home Address: ..... Home Address:.....

Home Phone: ..... Home Phone:.....

2. Full Name: ..... 2. Full Name:.....

Home Address: ..... Home Address:.....

Home Phone: ..... Home Phone:.....

How long have you been in business? Years..... Months.....

Paid up Capital (if a company): \$ .....

Approximate Monthly credit requested: \$ .....

**Your Bank Details**

Bank Name ..... Branch .....

BSB ..... A/c Number .....

Solicitor's Name and Address: .....



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Accountant's Name and Address .....

**Trade References**

1 .....	Phone .....	Fax .....
2 .....	Phone .....	Fax .....
3 .....	Phone .....	Fax .....

**GUARANTEE** by company directors: if the customer is a company, each Director of that company:

- Irrevocably and jointly and severally guarantees that the customer will fulfil its obligation to Kodex Industries in relation to all dealing between the customer and Kodex Industries
- Acknowledges that the validity of this guarantee will not be effected by any act or omission of Kodex
- Undertakes to execute any further guarantee document which Kodex may require.

**Guarantors Details (if required):**

Full Name: .....	Occupation: .....
Address: .....	Signature: .....
Full Name: .....	Occupation: .....
Address: .....	Signature: .....

I certify that the above information is true and correct and that I am authorised to make this application for credit. In relation to the Privacy Act 1988 (Cth) I authorise any person or company to give any information as may be required in response to credit enquiries. I have read understood and accept on behalf of the company of which I am a director the Terms and Conditions of Sales (enclosed) of Kodex which form part of and are to be read in conjunction with this credit application and any contract with Kodex and agree to be bound by these conditions.

Signed: ..... Date: .....

(Proprietor / Partner / Director / Authorised Signatory) Circle One

Full Name: ..... Position: .....



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### TERMS AND CONDITIONS OF SALE

#### 1. DEFINITIONS

These general terms and conditions of sale apply where Kodex ("Kodex") supplies products or services to a customer ("Customer") under a contract where for the purpose of these terms and conditions and unless the context otherwise requires:

"Conditions" means these Terms and Conditions of Sale;

"Contract" means the contract formed in accordance with clause 2, consisting of Kodex's proposal (if any), the relevant order and these Conditions;

"Contract amount" means the monetary value of the works good and/or services provided under the Contract payable by the Customer to Kodex;

"GST" means the tax imposed by the A New Tax System (Goods & Services) Act 1999 (Cth).

"Loss or Damage" includes all types of property, pecuniary or other loss or expense or damage, including direct indirect consequential loss or damage and loss of profits or revenue or production capacity.

#### 2. CONTRACT AND FORMATION

- 2.1. Subject to clause 2.2 a binding contract will form between the Customer and Kodex;
  - 2.1.1. if these Conditions form part of a Kodex proposal to the Customer then on receipt by Kodex of the Customer's unconditional acceptance of the proposal, evidenced by the Customer's purchase order referencing the proposal; or
  - 2.1.2. on Kodex's written acceptance of Customer's purchase order where if any counter terms and conditions are presented will immediately be negated in their entirety and superseded by these Conditions.
- 2.2. The Contract will constitute the entire contract between the parties in connection with the sale of any products and services and all prior written correspondence or material, representations or discussions shall have no effect.
- 2.3. No waiver modifications or variation of the Contract shall be valid or accepted or bind Kodex unless expressly agreed to in writing by an authorised representative of Kodex.
- 2.4. Unless otherwise stated in a proposal by Kodex any offer to supply products is valid for 30 days from the date of the offer.
- 2.5. Kodex reserves the right to vary the offer to reflect any change in cost to Kodex between the date of offer and the date of Contract.
- 2.6. Kodex reserves the right to vary the Contract sum at any time to include the costs of site allowances or changes to industrial conditions.

#### 3. CANCELLATION

- 3.1. The Customer may only cancel the Contract with Kodex's consent and only on the basis that the Customer meets all Loss or Damage incurred by Kodex as a result of the cancellation of the Contract in the timeframe specified by Kodex.
- 3.2. Kodex may suspend delivery, cease manufacturing or cancel any Contract without any liability whatsoever if the Customer at any time and as deemed by Kodex;
  - 3.2.1. breaches any terms or conditions of the contact;
  - 3.2.2. commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and is unable to pay its debts; or
  - 3.2.3. refuses or neglects to take delivery of the products described in the Contract.

#### 4. PRICE VARIATION

- 4.1. Unless otherwise stated by Kodex in the Contract Kodex may vary the prices stated in the Contract to reflect any change in costs to Kodex after the date of the Contract.
- 4.2. Where a list price applies to the products supplied by Kodex under the Contract all prices listed are (i) subject to alteration without notice, (ii) applicable to all deliveries on or after the effective date of any price alteration and (iii) do not include GST or any other government impost.

#### 5. VARIATIONS TO CONTRACT

- 5.1. The Contract amount is based on the scope of work as detailed in the information provided by the Customer to Kodex for the purpose of the Contract including where applicable plans, specifications (including standards and finishes), schedules and nominated quantities.
- 5.2. Any variations to the scope of the works or delivery arrangements or Contract shall be a variation to the Contract entitling Kodex to varying the Contract amount as stated and any other term or condition.

#### 6. SPECIFICATIONS

- 6.1. Where Kodex manufactures or supplies products according to the Customer's specification the Customer shall provide to Kodex accurate information to the extent required by Kodex to enable Kodex to provide the products specified.
- 6.2. The Customer warrants to Kodex that the information and any products to be manufactured by Kodex under the Contract does not breach any copyright, registered design, patent or other rights of any third party and the Customer shall indemnify and hold harmless Kodex in relation to any such alleged or actual breach.
- 6.3. Unless otherwise stated in the Contract the products shall be manufactured, finished or applied to a standard as determined by Kodex.
- 6.4. The Customer acknowledges and accepts that Kodex is only the distributor of third party products and in no way warrants or accepts any liabilities in connection with those third party products.
- 6.5. Any correspondence in relation to the third party products should be directed to the contact details as listed on the third party product.

#### 7. PAYMENTS

- 7.1. Time for payment of the amount due from the customer to Kodex shall be of the essence. The amount due includes the Contract sum, any variations to the Contract sum and any additional charges which Kodex is entitled to apply.
- 7.2. Subject to subclauses 7.3 and 7.4 below the customer shall pay the full amount due in accordance with the credit arrangements (if any) as agreed with Kodex.
- 7.3. Where no credit arrangements have been previously agreed to by Kodex but credit has been agreed by Kodex as a condition of a particular contract the Customer shall pay the full amount due with the month following the month of invoice.
- 7.4. Where no credit arrangements have been agreed by Kodex the Customer shall pay the full amount due before any delivery of the products.
- 7.5. The customer shall pay interest at the rate of 20% per annum calculated monthly on any amount not paid by the due date.
- 7.6. Products may be returned, provided the products are in good order being in the same or substantially same condition as initially delivered, within 7 days of delivery, after which time a re-stocking and handling fee of 10% of the Contract amount will be incurred and payable by the Customer. Freight charges will be payable by the Customer at cost on all pick ups. No returns will be accepted after 6 weeks.
- 7.7. Notwithstanding any other provisions herein the Customer hereby grants Kodex the right to lodge a caveat for any property that the Customer has any form of interest in in relation ] to any debt owing to Kodex.

#### 8. DELIVERY

- 8.1. Subject to subclause 8.2 delivery shall be on reasonable notice from the Customer to Kodex and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- 8.2. Where the Contract includes a delivery schedule delivery shall be in accordance with the dates contained therein.
- 8.3. Kodex shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond Kodex's control.



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- 8.4. Kodex reserves the right to delivery by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the Contract.
- 8.5. Delivery is deemed to occur at either (i) the place and time the Customer appropriates the products or (ii) in the absence of the Customer at site the products are deposited at the site for delivery nominated by the Customer as certified by the delivery docket/manifest signed by the cartage contractor.
- 8.6. Upon delivery the Customer shall become solely liable for any Loss or Damage to the delivered products by Kodex where the Customer requests delivery of those products to a specific site.
- 8.7. Nothing in this clause shall be construed as altering the transfer of title as specified in clause 9 and in the event of any inconsistency clause 9) will take precedence.

### 9. TITLE AND RISK

- 9.1. Title in the products shall pass to the Customer upon payment of the amount due in full together with any interest due.
- 9.2. Risk in the products shall pass to the Customer upon delivery as deemed in clause 8.

### 10. DEFECTIVE PRODUCTS

- 10.1. The Customer shall immediately inspect the products at the point of delivery or collection.
- 10.2. Notice of any defects shall be given by the Customer to Kodex in writing on the delivery docket/manifest signed by the Customer and immediately returned with the cartage contractor.
- 10.3. Where the point of delivery or collection is unattended the Customer shall give notice in writing to Kodex within 24 hours before the intended time of delivery or collection and prior to installation or application, of any defects in the products.
- 10.4. If the notice in accordance with clauses 10.1 and 10.2 is not given the products shall be deemed to be in good order and condition and in accordance with the Contract and accepted by the Customer.
- 10.5. Kodex shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product should not be installed or applied.
- 10.6. Should the Customer fail to cease the product installation or application under subclause 10.5 then the Customer waives all rights and discharges Kodex from any further obligations.

### 11. EXPRESS WARRANTY

- 11.1. If a product is defective and the Customer advises Kodex of that defect in accordance with subclauses 9(1) and 9(2) Kodex shall resupply the product but will not be liable for the removal of any defective products or the re-installation or re-application of any products or for any Loss or Damage.
- 11.2. The Customer shall take all reasonable steps to inform itself (including the reading and understanding of any relevant material safety data sheets or like documentation), its employees and agents in the use, handling, treatment and application of the products. Kodex shall not be liable for any Loss of Damage or injury arising in connection with or from the use of the products or by method of application.
- 11.3. Any design or description of use, capacity, durability, colour, manner of installation or application, information, details contained in drawings, data sheets, technical brochures or other illustrative documents (including directions for use and brochures) provided by Kodex are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purposes, use of application and Kodex shall not be liable in any and all of these aspects.
- 11.4. Where consumer legislation implies warranties in respect of products or services and the products or services are of a kind not ordinarily acquired for personal, domestic or household use or consumption then the Customer's remedies shall be limited to those set out in clause 11.1.
- 11.5. Other than as expressly provided herein Kodex provides no other implied or express warranty to the Customer in relation to the products or services.
- 11.6. Kodex shall have no obligation under this warranty herein until the full payment by the Customer of any and all monies owed to Kodex is received and/or Customers are within and under any current applicable Customer credit limit as approved by Kodex.
- 11.7. Kodex does not warrant in any form any products produced by Kodex for the Customer under any form of toll manufacturing arrangement (i.e where Kodex manufactures the Customer's products in accordance with the specifications and full information provided by the Customer to Kodex).
- 11.8. Further the Customer hereby accepts any and all warranties in relation to the toll manufactured products (in connection with clause 11.7) and shall hold Kodex harmless from any action, claims, liability of loss in respect of any toll manufacturing.

### 12. SAMPLES

Any sample product or sample colour is provided to indicate only the general nature of the product. Kodex provides no warranty or guarantee that the product supplied shall correspond in colour texture or blend with any sample or with any previous of future product supplied.

### 13. LIEN

- 13.1. The Customer agrees that Kodex has a lien over any products supplied by Kodex under Contract for the price payable or any amount due from the Customer to Kodex until all amounts have been paid in full.
- 13.2. In the event of default of payment by the Customer, Kodex may sell such products after notice to the Customer as Kodex sees fit including disposal of the products. Any additional Loss or Damage incurred by Kodex in exercising its rights under this clause shall be a debt due and payable on demand from the Customer.

### 14. FORCE MAJEURE

Kodex shall not be liable for any delay Loss or Damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events including industrial disputes, the unavailability of equipment materials or labour, fire, flood, machinery breakdown, civil disturbance, acts of God or government or similar statutory or regulatory action.

### 15. PALLETS

- 15.1. All pallets delivered with the products remain the property of Kodex and shall be returned in good order and conditions to Kodex within 30 days of the delivery or on demand by Kodex.
- 15.2. Any pallet not returned by the said date shall be deemed rented by the customer at a rate as determined by Kodex

### 16. ASSIGNMENT

Any contract incorporating these terms and conditions cannot be assigned by the Customer in whole or in part unless agreed in writing by Kodex and on any terms and conditions Kodex sees fit.

### 17. MEASUREMENT AND PAYMENT

Unless otherwise stated in the Contract the measurement of quantities for the purpose of calculating payments due to Kodex shall be on the basis of the quantities shown on the delivery docket receipt/manifest.



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### 18. UNANTICIPATED AND LATENT CONDITIONS

18.1. Should Kodex encounter physical and/or latent conditions on the site or its surrounding which Kodex considers could not reasonably have been anticipated at the date of the offer then;

18.1.1. Kodex shall advise the Customer of the existence of such changed conditions and the measure necessary to deal with the conditions and

18.1.2. All additional work carried out by Kodex or any Loss or Damage incurred by Kodex as a result of the unanticipated or latent conditions shall be at the Customer's expense.

### 19. DELAY IN INSTALLATION

19.1. Unless otherwise stated in the Contract the installation of products shall be carried out in accordance with the program of works as agreed between the Customer and Kodex

19.2. Where the program of works is delayed or suspended for any reason or cause outside the control of Kodex all additional Loss or Damage incurred by Kodex by reason of such delay or suspension shall be borne by the Customer.

19.3. Kodex shall not be liable for any Loss or Damage incurred by the customer arising out of delay or suspension of the work under the Contract howsoever caused..

### 20. INSTALLATION OR APPLICATION OF PRODUCTS

20.1. Where Kodex installs or applies products or provides services (including toll manufacturing) according to the Customer's designs, plans, specifications or directions (the "information") the Customer warrants to Kodex that the information is correct accurate and sufficient for the specified purpose.

20.2. Kodex shall not be liable for any Loss or Damage or injury howsoever arising in connection with the installed, applied or manufactured products as a result of the information supplied by the Customer.

### 21. ACCEPTANCE OF INSTALLATION OR APPLICATION

21.1. At the completion of any installation or application works Kodex shall notify the Customer within 7 days of such notification and the Customer shall provide to Kodex a list of any items or work which the Customer considers to be outstanding or defective.

21.2. Kodex shall not be liable for any outstanding work or defects which are not notified with this clause or clause 9.

### 22. STATUTORY REQUIREMENTS

Should any such term or condition be deemed by legislation to be void, voidable or unenforceable then that term or condition shall be severed and the remaining terms and conditions shall continue with full force and effect.

### 23. NOTICES

All notices given under or in connection with a contract shall be in writing and given or delivered to the recipient at its address as specified in the contract or at its registered offices.

### 24. DISPUTE RESOLUTION

24.1. The Customer and Kodex hereby agree that any and all claims (contractual, statutory, common law or otherwise), disputes, or suits that in any way, directly or indirectly, arise out of or relate to the contract shall first be submitted to non-binding mediation before a neutral mediator jointly selected by the parties.

24.2. In the absence of resolution by mediation, all such claims shall be settled by arbitration in accordance with the Australian Centre for International Commercial Arbitration's rules current at the date of the reference of the dispute to arbitration. Any such mediation and/or arbitration shall take place in Sydney, Australia.

24.3. Any claims, disputes or suits between the parties hereto shall be governed by, and construed and enforced in accordance with, the laws and courts of the New South Wales and the courts competent to determine appeals from those courts.

### 25. GOVERNING LAW

The contract is governed by and subject to the laws of New South Wales and any competent court within that State.

### 26. CONFIDENTIAL INFORMATION

26.1. If at any time Kodex discloses to the Customer or the Customer becomes aware of confidential information of Kodex including information relating to products, formula, recipe, materials, systems, procedures, processes, tests or equipment or information that by its very appearance and content is of a commercial or confidential nature or can be reasonably construed as being of a commercial or confidential nature the Customer shall not use the information for any purpose not approved by Kodex and shall not disclose that confidential information to any person without Kodex's written approval.

26.2. Should the Customer be in possession of any such confidential information the Customer warrants that it will on discovery of the confidential information contact and inform Kodex of the information in the Customer's possession and take all action necessary to maintain the confidential nature of the information.

### 27. LIMITATION OF LIABILITY

Kodex and its directors, employees, consultants, contractors and agents shall not be liable to the Customer (i) under or in connection with the contract (ii) in tort for negligence or otherwise (iii) otherwise at law (including by statute to the extent it is possible to exclude liability) and in equity generally including without limitation for restitution for unjust enrichment for any Loss or Damage which is not expressly provided for by contract. To the extent that Kodex is liable under contract then Kodex's liability to the Customer will be reduced to the extent the Customer contributed to the Loss or Damage and in any event and in the aggregate is limited to the Contract sum.

### 28. SURVIVAL OF OBLIGATIONS

The following clauses 1, 2, 3, 9, 10, 11, 21, 24, 26, 27 and 28 will survive termination or completion of the Contract.