

# MINOVA TERMS AND CONDITIONS OF SALE

**1 Introduction.** These Terms and Conditions of Sale apply to sales of **Products and Services** (if applicable) by Minova to the customer/buyer/purchaser (hereafter, **Buyer**), each as identified in the proposal, sales or purchase order or price list that is attached to or references these Terms and Conditions (collectively the **Contract**). Buyer is deemed to have agreed to be bound by the terms of this Contract by: (i) timely returning a signed version of this Contract to Minova; (ii) by placing a purchase order or other request to Minova for supply of the Products and/or Services to the Site (e.g. placement of a purchase order or telephone request accepted by Minova); (iii) any timely written indication that the proposal, sales order or price list has been accepted or that the right to supply the Products or Services to the Buyer has been awarded to Minova. **Site** refers to the place where Services will be performed; Minova and the Buyer are each a **Party** and together, they are the **Parties**.

**2 Prices and Payment.** Unless stated otherwise in this Contract, payments are due within 28 days of the date of invoice. Payments not received when due will incur interest at 1.5% per month (or if less, the maximum amount legally permitted) until paid. Minova's supply obligations are dependent upon timely invoice payment. Minova may, among other remedies, limit or cancel Buyer's credit, suspend deliveries or performance, or terminate this Contract in the event Buyer fails to make payment when due. If Buyer's financial condition gives Minova, in its reasonable judgment, grounds to believe Buyer has or will become unable to perform under this Contract, Minova may require full or partial cash payment in advance or suspend performance until Buyer's financial condition materially improves and Buyer pays sums due to Minova. Buyer shall not be entitled to withhold payment or to set-off payment against any sum owed to Buyer by Minova unless specifically agreed otherwise between the Parties in writing or as required by law. The prices of the Products and Services do not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority upon the sale or use of the Products, or the performance of the Services.

**3 Change in Laws.** The prices set out in this Contract are based on the laws and Buyer policies in effect on the date of the Contract. Minova reserves the right to increase the prices at any time upon written notice if any new or amended law, regulation or ordinance (or if Minova's compliance with any change in the rules or policies of Buyer) results in an increase in the cost of providing the Services or producing, packaging, storing or transporting the Product, including but not limited to increases in raw material or other input costs. For the avoidance of doubt, the foregoing shall include change in, or introduction of, a tax and/or increased costs (including the cost of acquiring permits or credits and the cost of plant modifications or additions) in each case arising in connection with a change in, or the introduction of a scheme for, the management of greenhouse gas emissions or concentrations or management of water usage or water conservation and shall apply also to any changed interpretation of an existing law, regulation, ordinance or Buyer's rule or policy.

**4 Access.** Where applicable, Buyer will provide Minova free and safe access to all areas of the Site necessary to deliver Products and perform any Services, including, without limitation, a reasonably dry surface suitable for equipment access. If this Contract includes manufacturing operations at the Site, the Buyer will set aside part of Site for Minova to manufacture or store Products or raw materials and related equipment used for production. Each Party will manage its employees and contractors to ensure non-interference with the safe and efficient performance of the Services at the Site.

**5 Cooperation.** Minova's supply obligations under this Contract are conditional upon Buyer furnishing Minova (where applicable) with reasonably accurate forecasts and prompt notices of anticipated changes to forecasted requirements. The Buyer will submit orders with a reasonable lead time to allow Minova to meet Buyer's requirements. Minova will use all reasonable endeavours to deliver each of Buyer's orders for Products and perform Services on the date and at the time specified in an order or otherwise agreed between the Parties but the time of delivery of Products or of performance of Services shall not be of the essence nor may it be made of the essence by notice. If Buyer fails to require delivery of Products or performance of Services when delivery of Products or performance of Services falls due Minova shall be considered to have tendered and Buyer to have refused to accept such delivery of Products or performance of Services.

**6 Performance Standards and Warranties.** Minova will perform the Services in compliance with applicable law, and with the standard of care, skill, and diligence normally provided by a professional in the performance of such work. Minova warrants that it has title to the Products and that upon delivery the Products will conform to the 'Technical Properties' specified in Minova's 'Technical Data Sheet' for the Products in effect at the time of manufacture. In the case of Products not manufactured by Minova, no warranty is made by Minova but Minova will use all commercially reasonable endeavours to obtain and pass on to Buyer the full benefits of whatever warranty Minova has been able to obtain from the manufacturer. These are Minova's exclusive warranties in relation to the Products and Services. MINOVA MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER GOODS OR MATERIALS.

**7 Inspection and Warranty Claims.** Buyer shall promptly examine the Products following delivery for any damage, defect or shortage, and evaluate the Services following performance for any non-compliance. Buyer shall provide Minova with all claims for damage, defect or shortage in writing promptly after receipt of the Products or performance of the Services. Failure to bring an action in respect of any claim within 12 months of receipt of the Products or performance of the Services shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have then been discovered or whether processing, further manufacture, other use, or resale of the Products shall have then taken place. Subject to clause 12, Minova's exclusive liability for breach of any warranty under clause 6 will be limited to one of the following remedies (at Minova's option):

If the breach relates to Products, the:

- replacement of the Products or the supply of equivalent products;
- repair of such Products;
- payment of the cost of replacing the Products or of acquiring equivalent products;

- refund of the price paid by Buyer or the provision of a credit note for the relevant Products; or
  - payment of the cost of having the Products repaired.
- If the breach relates to Services, the:
- resupply of the Services; or
  - payment of the cost of resupplying the Services.

**8 Force Majeure.** Any of the following are **Force Majeure**: acts of God; acts of civil or military authorities; war; riot; fire; explosion; flood; sabotage or acts of terrorism; lack of adequate fuel, power, raw materials, labour, containers or transportation facilities; changes in applicable governmental laws, regulations, or orders after the date of commencement of performance hereunder; breakage or failure of machinery or apparatus; labour disputes; acts or omissions of Buyer, its employees, officers or agents (which shall only constitute Force Majeure for Minova and not for Buyer); or any other event, whether or not of the class or kind set out herein, beyond the reasonable control of a Party, including Force Majeure affecting Minova's key suppliers or subcontractors. Neither Party will be liable for delay in performance of, or a failure to deliver or perform (except the obligation to pay money) if such delay or failure is caused by a Force Majeure or if performance by Minova, including performance through alternative supply points, alternative suppliers or alternative solutions, is rendered materially more expensive such that performance is not commercially reasonable for Minova. Minova reserves the right, in its sole discretion, to fairly allocate inventories and current production and to substitute suitable materials when, in its opinion, circumstances warrant such allocation or substitution.

**9 Termination.** A Party may terminate this Contract by giving written notice to the other Party, if the other Party commits any material breach of this Contract and fails to remedy the same within 14 days after receipt of a written notice giving details of the breach and requiring the Party in breach to remedy it. A Party may also terminate this Contract immediately if: (a) an encumbrancer takes possession or a receiver is appointed over any property or asset of the other Party which is relevant to its performance of this Contract; (b) the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order; (c) the other Party goes into liquidation (for whatever reason); or (d) the other Party ceases, or threatens to cease, to carry on business or becomes a Restricted Party. Minova may also terminate this Contract or suspend performance without penalty if the costs incurred by Minova in performing its obligations herein exceed the amounts paid by Buyer to Minova for Products and/or Services supplied under this Contract, if the Buyer breaches clause 15, 16, 17 or 18, or where Minova has the reasonable belief that the existence of any Applicable Trade Control Law (as defined in clause 17, and including any such law coming into effect after entry into this Contract) would have the effect that Minova or any other affiliated company under the same ultimate corporate control with Minova would breach any law by performing an obligation under this Contract.

**10 Title and Risk of Loss.** Title to, and risk of loss of, the Products shall pass to Buyer upon delivery at the point of delivery specified in this Contract. Minova shall retain a security interest in and a right of possession of, the Products until Buyer makes full payment. Demurrage and detention charges shall be for Buyer's account. Subject to compliance with applicable laws, when shipping any Product in bulk form, the quantity of Product as weighed at the point of physical despatch shall be taken as correct.

## 11 Responsibility.

(a) Each Party acknowledges that the other Party will rely upon the proper performance of its Contract duties and that in some cases, performance may be conditional upon the other Party's fulfilment of its responsibilities. Buyer shall ensure that the Products are used safely and in accordance with applicable law. Unless otherwise agreed in writing, it is the responsibility of the Buyer to determine that the Products are appropriate for the Buyer's intended use. Buyer acknowledges that it is familiar with and accepts the risks associated with the Products and Services and that even the exercise of due care in the use of the Products may not prevent injuries or damage. Buyer also acknowledges and agrees that Buyer's choice of Products and Services (or election not to purchase Products and Services that may mitigate risk) may result in adverse consequences. Buyer assumes all risks and liability associated with: (i) Buyer's handling, ownership, possession, storage, further processing, transportation, disposal, sale or other use of the Products, whether used alone or in combination with or incorporated into other goods or materials; (ii) any environmental effects and damage associated with the use of the Products and performance of the Services not directly caused by Minova's breach of this Contract; and (iii) Buyer's breach of this Contract or violation or alleged violation of any law or regulation.

(b) Buyer warrants that all of its employees, contractors or other people to whom it grants access to the Products (the **Buyer Personnel**) will be fully trained and informed (without reliance on Minova except as to the accuracy of safety information actually furnished by Minova) regarding the proper storage, handling, use and application of the Products. Buyer further warrants that all Buyer Personnel who handle or use the Products will do so safely in accordance with all applicable laws, regulations, warnings and instructions, and currently accepted industry practice.

**12 Liability.** Each Party's liability to the other Party for loss or damage of any kind in contract, tort, under any statute or otherwise (including negligence), arising from or relating to this Contract or its subject matter, is reduced to the extent that the other Party or a third party causes or contributes to the loss or damage. In no case shall such liability exceed the limitations set out below.

Neither Party shall be liable for incidental, indirect, consequential, punitive or special damages of any kind. Even if losses are deemed direct losses, Minova shall not be liable for loss of production, lost profits, business, contracts, revenues or opportunities or any similar damages.

Under no circumstances shall Minova's liability exceed the purchase price of the Product or Service giving rise to the liability. Minova disclaims all other liability to the Buyer or to any other person whether based upon contract, tort, or other legal theories including negligence and strict liability. Each provision in this Contract that provides for a limitation of liability,

disclaimer of warranty or exclusion of damages is severable and independent of any other provision.

Nothing in this Contract excludes or limits the liability of a Party for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability which a Party is legally prohibited from excluding or limiting, to the extent of such prohibition.

- 13 Insurance.** Each Party will carry sufficient insurance to cover its potential liabilities hereunder and, on request, will furnish the other Party with reasonable evidence of such cover.
- 14 Confidentiality.** Each Party and its respective agents, employees and representatives shall hold in strict confidence and shall not use or disclose or permit the use or disclosure of (i) the terms of this Contract, (ii) any information regarding the operation of the Products or the performance of the Services, or (iii) any information that may come to its knowledge in the course of carrying out this Contract as to the operations, business dealings or financial affairs of the other Party, without the express prior written consent of the other Party. This confidentiality obligation does not apply to any disclosure of information to the extent that it: (i) was at the time of the disclosure already in the public domain other than by breach of this Contract; (ii) subsequently enters the public domain without any breach of this Contract; (iii) is required by applicable law or order to be communicated to a person who is authorised by law to receive that information; or (iv) is required to be disclosed by the listing rules of a recognised stock exchange.
- 15 Intellectual Property.** Buyer acknowledges and agrees that Minova is the sole and exclusive owner of the Intellectual Property in the Products or Services (including any modifications or improvements developed during the Supply) and the rights attached to that Intellectual Property. Buyer agrees that (unless otherwise expressly provided in writing or as permitted by law) nothing in this Contract grants to the Buyer any right, title or interest in or to any of the Intellectual Property in the Products or Services. Buyer will not claim (whether during the term of the Contract or thereafter) to have acquired any right, title or interest to the Intellectual Property in the Products or Services by virtue of the rights granted to Buyer by this Contract. **Intellectual Property** means any intellectual or industrial property right anywhere in the world including, without limitation, any patent, patent application, utility model, copyright (including copyright in manuals, databases, promotional materials and other materials), registered design and other design rights, and any other rights that may subsist anywhere in the world in inventions and other manufacturing processes, technical and other information of Minova.
- 16 Bribery.** Buyer warrants that it will comply with all anti-corruption laws applicable to it and/or Minova and that neither it, any of its affiliates, or any sub-contractor or third party utilised by it will authorise, offer, promise or provide (or cause to be offered, promised or provided) anything of value, directly or indirectly, to: (i) any Government Official in order to influence or reward official action in connection with this Contract; or (ii) any person to influence or reward that person to act in breach of a duty of good faith, impartiality or trust in relation to this Contract. Save for any ownership interest in respect of shares listed on a recognised stock exchange, the Buyer represents and warrants that neither it or any of its affiliates is owned in whole or in part by a Government Official in a position to take or influence official action for or against Minova or the Buyer and that no officer, director or employee of the Buyer or its affiliates is such a Government Official. **Government Official** means any individual who is employed by or acting on behalf of a government including political parties and party officials, candidates for public office, employees of state owned companies and any person representing to be the intermediary of any of the above.
- 17 Trade Controls.** Buyer warrants that neither it or any of its directors, officers or employees is a Restricted Party and that it will not make any funds, goods, technology or services available to a Restricted Party for any reason in connection with this Contract. Buyer agrees that it will not re-sell any Products: (i) to a Restricted Party; (ii) to an entity, person or government in a Sanctioned Territory; or (iii) if this will result in the transport of Products to, through, or in a Sanctioned Territory or the Products being provided to a Restricted Party, without full compliance with Applicable Trade Control Laws and first obtaining the written consent of Minova (which may be withheld at Minova's discretion). The Buyer must provide to Minova on request an end-use certificate, for any Products, Services or technology provided under this Contract. **Applicable Trade Controls Laws** means any sanctions, export control, or other regulations, directives or laws that restrict the trade of goods, technology, or services which are imposed by Australia, the United States, the United Kingdom, Canada, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council and also includes U.S. anti-boycott laws and regulations. **Sanctioned Territory** means any country or territory against which comprehensive sanctions are imposed under Applicable Trade Control Laws. As at the date of this contract, Sanctioned Territories include Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. **Restricted Party** means any person, entity, or vessel/aircraft that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including but not limited to those designated under the U.S. List of Specially Designated Nationals and Blocked Persons and those located, owned or controlled wholly or partly by the government of, or organised under the laws of, a Sanctioned Territory.
- 18 Labour Practices and Compliance Systems.** The Buyer warrants it: (i) has made all reasonable investigations into its labour practices to ensure that its business complies with the Forced Labour and Slavery Conventions (meaning any conventions which are identified from time to time by the governing body of the International Labour Office as fundamental to the rights of human beings at work); (ii) has implemented all necessary processes, procedures, investigations and compliance systems to ensure the warranties made in this clause and clauses 16 and 17 will continue to be the case at all times; and (iii) will in future

take all necessary actions and investigations to validate the warranties made in this clause and clauses 16 and 17.

- 19 Privacy.** In this clause: (i) **GDPR** means Regulation (EU) 2016/679 (General Data Protection Regulation), (ii) **Privacy Laws** means GDPR, the Privacy Act 1988 (Australia), and any other any Laws relating to privacy, data protection, surveillance, data security, direct marketing or the processing of Personal Data; (iii) **Personal Data** means 'personal data' as defined in the GDPR, 'personal information' as defined in the Privacy Act 1988 (Australia), and any other information to which a Privacy Law applies; and (iv) **Data Subject** means the person to whom Personal Data relates. Each party must comply with any Privacy Laws applicable to it in performing this Agreement. If Minova provides any Personal Data to the Buyer in connection with this Agreement, the Buyer must keep that data confidential and comply with Minova's directions concerning the maintenance of and access to that data. The Buyer must not provide any Personal Data to Minova in connection with this Agreement unless it has obtained the consent of the Data Subjects, and notified them of Minova's Privacy Statement at <https://www.orica.com/Privacy/>.
- 20 Records and Audit.** The Buyer will maintain accurate and reasonably detailed records in connection with this Contract and will, upon request, permit Minova to audit, examine and inspect any books, financial records, property or location under the control of the Buyer as necessary for the verification of compliance with clauses 16 to 19 inclusive, except to the extent prohibited under applicable competition or anti-trust laws.
- 21 Miscellaneous.**
- (a) Neither Party may assign its rights, powers, duties or obligations under this Contract without the prior written consent of the other Party and any attempted assignment or delegation without such consent shall be void; provided, however, that Minova may assign its rights, powers, duties or obligations under this Contract to: (i) its ultimate parent company or to any present or future subsidiary (whether direct or indirect) of Minova or such parent company; or (ii) a third party in connection with a sale of all or a significant portion of Minova's stock or assets. The following shall be deemed an assignment of this Contract by Buyer: (i) the sale of all or substantially all of the stock of Buyer; (ii) or all or substantially all of its assets, are acquired by or merged with another person or entity; or (iii) there is a change of the ability to direct the affairs of Buyer.
- (b) All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (i) the second day after mailing, if sent by registered or certified mail, (ii) upon delivery, if delivered by hand or by courier, (iii) when received, if sent by electronic mail to the Parties as applicable either at the addresses listed in the Contract, or at such other address as may be designated by notice given in accordance with this provision.
- (c) The terms of this Contract that by their nature are reasonably intended to survive this Contract, including without limitation, sections 6, 7, and 12 to 20 (inclusive), shall survive the expiration or termination of this Contract.
- (d) This Contract constitutes the full understanding of the Parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No amendment or modification of any provision of this Contract shall be effected by the acknowledgment or acceptance of any purchase order, shipping instruction forms or any other document containing terms or conditions at variance with or in addition to those set forth herein. Any such varying terms and conditions shall be void and unenforceable, and any purported provisions to the contrary are hereby excluded or extinguished. Further, no amendment or modification of any provision of this Contract shall be binding unless the same is in writing, signed by the Party to be bound, and is specifically described as an amendment or modification of this Contract.
- (e) There are no third party beneficiaries to this Contract, and any law which would otherwise create such a position is expressly excluded to the full extent permissible.
- (f) In this Contract, a reference to any statute or law is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment of it, provided that no such amendment or re-enactment shall apply for the purposes of this Contract to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, Minova.
- (g) The headings used herein are for convenience only and do not affect interpretation. No waiver by a Party of any one or more breach in performance of the Contract will operate as a waiver of a future breach. If any provision of the Contract is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Contract will remain in full force and effect. Except if and to the extent otherwise provided by law, nothing in this Contract is to be interpreted against a Party on the grounds that the Party put forward this Contract or any part of it.
- (h) The validity, interpretation and performance of this Contract and any dispute arising from, under, or in connection with this Contract (Dispute) shall be governed by and construed in accordance with the laws of Victoria, without regard to its conflicts of law provisions. The Parties submit to the non-exclusive jurisdiction of the Courts of Victoria in respect of any Dispute. The United Nations Convention on Contracts for the International Sale of Goods or equivalent shall not apply to this Contract.

