



Devco Australia Holdings Pty Ltd

P O Box 14, Pinkenba QLD 4008 | 398 Tingira Street, Pinkenba QLD 4008

Ph: +61 7 3260 2361 |

Web: www.sulphur.com.au | Email: customerservice@sulphur.com.au

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Devco" means Devco Australia Holdings Pty Ltd ABN 45 098 077 662.
- 1.2 "Customer" means the individual or entity that has contracted with Devco Australia Holdings Pty Ltd for Products and/or Services.
- 1.3 "Products" means any products supplied by Devco Australia Holdings Pty Ltd to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, sulphur products.
- 1.4 "Price" means the cost of the Products and/or Services as agreed between Devco Australia Holdings Pty Ltd and the Customer and includes all out of pocket expenses Devco Australia Holdings Pty Ltd incurs on the Customer's behalf subject to clause 5 of this contract.
- 1.5 "Services" means any services provided by Devco Australia Holdings Pty Ltd to the Customer including but not limited to the importation and supply of sulphur products.

2. ACCEPTANCE

- 2.1 Any instructions received by Devco Australia Holdings Pty Ltd from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms and Conditions take precedence over any terms and conditions contained in any document provided by the Customer.

4. PRIVACY ACT 1988 (CTH) (AS AMENDED)

- 4.1 Devco Australia Holdings Pty Ltd collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy. This policy may be located at <https://www.sulphur.com.au/>. A hardcopy of this policy can also be provided to the Customer free of charge, upon request.
 - 4.1.1 The Privacy Policy sets out: the personal information Devco Australia Holdings Pty Ltd collects; how Devco Australia Holdings Pty Ltd collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Devco Australia Holdings Pty Ltd's management of the information;
- 4.2 By the Customer providing instructions to Devco Australia Holdings Pty Ltd for the supply of Products and Services, the Customer is consenting to Devco Australia Holdings Pty Ltd collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of Devco Australia Holdings Pty Ltd's Privacy Policy, and in accordance with Australia's privacy laws.

5. PRICE

- 5.1 The Price shall, at Devco Australia Holdings Pty Ltd's sole discretion, be:
 - 5.1.1 as stated on any invoice provided by Devco Australia Holdings Pty Ltd to the Customer; or
 - 5.1.2 Devco Australia Holdings Pty Ltd's quoted price (subject to clause 7).

6. PAYMENT

- 6.1 Unless otherwise agreed in writing, all accounts must be paid on the date(s) specified on the invoice provided by Devco Australia Holdings Pty Ltd to the Customer.
- 6.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
 - 6.2.1 there is non-payment of any sum by the due date;
 - 6.2.2 Devco forms the view that the Customer will not pay any sum by its due date;
 - 6.2.3 the Customer is bankrupted or enters administration, liquidation or receivership;
 - 6.2.4 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - 6.2.5 any material adverse change in the financial position of the Customer.
- 6.3 Interest accrues on any amount owing after the due date at the rate of 15% per annum, calculated daily from the first day overdue until payment.
- 6.4 All payments to be made by the Customer will be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever, unless prohibited by law.
- 6.5 The Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection costs and legal costs which Devco Australia Holdings Pty Ltd has incurred or is liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.



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6.6 For the purposes of clause 6.5, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of the amount due (as agreed by Devco Australia Holdings Pty Ltd and the collection agent) and the Customer expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) Devco Australia Holdings Pty Ltd is not liable to pay the collection agent the commission, until the Customer has made payment of the Customer's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Customer makes a payment for an overdue debt.

6.7 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in Devco Australia Holdings Pty Ltd receiving cleared funds for the entire amount of the negotiable instrument.

7. QUOTATION

7.1 Where a quotation is given by Devco Australia Holdings Pty Ltd for Products and Services:

7.1.1 unless otherwise agreed, is not an offer to sell or provide Products and Services;

7.1.2 unless otherwise agreed the quotation shall be valid for 30 days from date of issue;

7.1.3 Devco Australia Holdings Pty Ltd will not be bound by any order given until accepted in writing;

7.1.4 Devco Australia Holdings Pty Ltd reserves the right to alter the quotation because of circumstances beyond its control including and, in no way limited to, increases in the price charged by its suppliers for products and/or services.

7.2 Where Products and Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Products and Services.

8. RISK TO PRODUCTS AND DELIVERY

8.1 Risk in any Products shall pass to the Customer at the time when the Products have been delivered to or collected by the Customer;

8.2 If the Products are being collected by the Customer, the Customer agrees that it and its employees, agents or sub-contractors will comply with all of Devco's safety policies and procedures, and warrants that it holds sufficient insurance for its employees, agents or sub-contractors for such purposes;

8.3 Any date quoted for delivery by Devco Australia Holdings Pty Ltd is an estimate only;

8.4 Unless a guarantee is given Devco Australia Holdings Pty Ltd in writing, providing for liquidated damages for failure to deliver by the date quoted for delivery or completion, Devco Australia Holdings Pty Ltd will not be liable to the Customer for any loss or damage howsoever arising even if arising out of the negligence of Devco Australia Holdings Pty Ltd for failure to deliver or complete the relevant Services on or before the date quoted for same;

8.5 Devco Australia Holdings Pty Ltd reserves the right to deliver the Products to the Customer by instalments. If delivery is made by instalments the Customer is not entitled to:

8.5.1 terminate or cancel the order following its acceptance by Devco Australia Holdings Pty Ltd;

8.5.2 terminate these Terms and Conditions;

8.5.3 any claim, loss or damage howsoever arising from the failure of Devco Australia Holdings Pty Ltd to deliver any instalments on or before the date quoted for delivery/completion.

8.6 Where special freight requirements are requested by the Customer such charges for freight will be paid by the Customer.

9. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

Products

9.1 Whilst risk in the Products passes on delivery or collection by the Customer, legal and beneficial title in the Products shall remain with Devco Australia Holdings Pty Ltd until it has received payment in full for all monies owed by the Customer.

9.2 Until Devco Australia Holdings Pty Ltd has received payment in full for all monies owed by the Customer, Devco Australia Holdings Pty Ltd reserves the following rights:

9.2.1 legal and beneficial ownership of the Products;

9.2.2 the right to enter the Customer's premises and retake possession of the Products;

9.2.3 the right to keep or resell any Products repossessed under sub-clause 9.2.2; and

9.2.4 any other rights it may have at law or under the PPSA.

9.3 Where, pursuant to sub-clause 9.2.3:

9.3.1 Devco Australia Holdings Pty Ltd resells the Products repossessed, it is agreed that Devco Australia Holdings Pty Ltd may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or



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- 9.3.2 Devco Australia Holdings Pty Ltd retains possession of the repossessed Products, it is agreed that Devco Australia Holdings Pty Ltd may credit the Customer's account with the invoice value less such sum as Devco Australia Holdings Pty Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 9.4 Devco Australia Holdings Pty Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Products.
- 9.5 If the Products are mixed or incorporated into any property of the Customer, title in the Products shall remain with Devco Australia Holdings Pty Ltd until the Customer has made payment for all monies owed to Devco Australia Holdings Pty Ltd and where those Products are mixed with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to Devco Australia Holdings Pty Ltd as security for the full satisfaction by the Customer of the full amount owing between Devco Australia Holdings Pty Ltd and the Customer.
- 9.6 Until Devco Australia Holdings Pty Ltd receives payment for Products in full, the Customer acknowledges that Devco Australia Holdings Pty Ltd has a Purchase Money Security Interest ("PMSI") which attaches over the Products and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Devco Australia Holdings Pty Ltd.

General

- 9.7 Upon assenting to these Terms and Conditions, the Customer acknowledges and agrees that these Terms and Conditions constitute a Security Agreement for the purposes of the PPSA.
- 9.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which Devco Australia Holdings Pty Ltd asks and considers reasonably necessary for the purposes of:
- 9.8.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
- 9.8.2 enabling Devco Australia Holdings Pty Ltd to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by Devco Australia Holdings Pty Ltd.
- 9.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- 9.9.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 9.9.2 redeem the Products under section 142 of the PPSA;
- 9.9.3 reinstate the Agreement under section 143 of the PPSA;
- 9.9.4 receive a Verification Statement.
- 9.10 Nothing in clause 9 prevents Devco Australia Holdings Pty Ltd from taking collection or legal action against the Customer to recover any monies owed from time to time.

10. DISPUTES

- 10.1 No claim relating to Products or Services will be considered unless made in writing within 7 days of delivery /or collection of the Products.

11. LIABILITY

- 11.1 All implied conditions, warranties and undertakings are expressly excluded to the extent permitted by law.
- 11.2 Where the Products are of a kind other than goods ordinarily acquired for personal, domestic or household use, then Devco Australia Holdings Pty Ltd's liability is limited, at its option, to anyone or more of the following:
- 11.2.1 the replacement or supply of the equivalent of the Products; or
- 11.2.2 the payment of the costs of replacing the Products or acquiring their equivalent.
- 11.3 Subject to the Customer's rights under Schedule 2 of the *Competition and Consumer Act 2010* ("CCA"), Devco Australia Holdings Pty Ltd shall not be liable for:
- 11.3.1 any loss or damage of any kind whatsoever, arising from the Products, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Products; and
- 11.3.2 the Customer shall indemnify Devco Australia Holdings Pty Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Devco Australia Holdings Pty Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Devco Australia Holdings Pty Ltd, its agents or employees in connection with the Products.



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12. WARRANTY

12.1 Manufacturer's warranty applies to the Products where applicable.

13. CANCELLATION

13.1 Orders placed with Devco cannot be cancelled without the written approval of Devco. In the event Devco accepts the cancellation of any order placed, it shall be entitled to, and the Customer agrees to pay Devco for the cost of the Products plus any import or freight costs to the date of the cancellation, including a fee for the processing and acceptance of the Customer's order and request for cancellation.

14. CHARGE

14.1 The Customer hereby charges in favour of Devco Australia Holdings Pty Ltd all of the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has or which it may later acquire any such interest in, with payment of all monies owing by the Customer to Devco Australia Holdings Pty Ltd from time to time and hereby consents to Devco Australia Holdings Pty Ltd lodging a caveat or caveats which note Devco Australia Holdings Pty Ltd's interest.

15. JURISDICTION

15.1 These terms and conditions and all matters concerning the business relationship between Devco Australia Holdings Pty Ltd and the Customer shall be governed by the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland for the conduct of any litigation.

16. ASSIGNMENT

16.1 The Customer cannot assign these terms and conditions without the prior written consent of Devco Australia Holdings Pty Ltd.

16.2 Devco Australia Holdings Pty Ltd can assign these terms and conditions to a third party without the consent of the Customer.

17. MISCELLANEOUS

17.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Devco Australia Holdings Pty Ltd, Devco Australia Holdings Pty Ltd, is unable to perform in whole or in part any obligation under these terms and conditions, including delay in delivery, Devco Australia Holdings Pty Ltd shall be relieved of that obligation under these terms and conditions to the extent and for that period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.

17.2 Failure by Devco Australia Holdings Pty Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this contract.

17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.

17.4 The Customer will notify Devco Australia Holdings Pty Ltd in writing of any change of ownership of the Customer or its business, or of directorships in the case of a corporate Customer, or of any other change whatsoever affecting these terms and conditions within seven (7) days from the date of such a change.

17.5 The Customer indemnifies Devco Australia Holdings Pty Ltd from and against any loss or damage incurred by it as a result of the Customer's failure to notify Devco Australia Holdings Pty Ltd of any change in ownership.

17.6 Any variation of the terms and conditions contained in this contract must be agreed to in writing by Devco Australia Holdings Pty Ltd for it to have any legal effect.

17.7 *Electronic Signatures:* Pursuant to section 14 of the *Electronic Transactions (Queensland) Act 2001*, the parties to this Agreement consent to the use of an electronic signature as a means of executing this Agreement and as defined in that Act.

17.8 *Sending Material Electronically:* Pursuant to sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001*, the parties to this Agreement consent to both give and receive information by electronic communication as defined in that Act. We are able to send and receive documents electronically. However, as such transmission is not secure it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically (or you accept any document electronically), you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.