

# Bacto Laboratories Pty Ltd.

ABN 60 000 525 244.

310-312 Elizabeth Drive (P.O. Box 8511), Mt Pritchard, NSW, 2170 Australia.

Ph: +61(0)2 9823-9000 Fax: +61(0)2 9601-8293.

Email: info@bacto.com.au Web: www.bacto.com.au

## APPLICATION FOR A 30 DAY COMMERCIAL ACCOUNT.

**Type of Business:**  Government;  Pty Ltd Company;  Public Company;  Partnership;  Sole Trader;  Other

**FULL CUSTOMER NAME:** \_\_\_\_\_

ABN: \_\_\_\_\_ Year Company Established: \_\_\_\_\_

### **POSTAL ADDRESS / STATEMENT ADDRESS:**

Street/PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

Sales Contact: \_\_\_\_\_ Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

Accounts Contact: \_\_\_\_\_ Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address (to send statements): \_\_\_\_\_

### **DELIVERY ADDRESS: (If different from Postal Address)**

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_

**MAIN BUSINESS ACTIVITY:** \_\_\_\_\_

**BANKING DETAILS:** Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

### **NAME OF DIRECTORS:**

1. \_\_\_\_\_ 3. \_\_\_\_\_

2. \_\_\_\_\_ 4. \_\_\_\_\_

Estimated Monthly Purchases: \$ \_\_\_\_\_

### **PLEASE SUPPLY THREE REFERENCES:**

Ref 1: \_\_\_\_\_ Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

Ref 2: \_\_\_\_\_ Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

Ref 3: \_\_\_\_\_ Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

How did you hear about Bacto: \_\_\_\_\_

**I/We hereby confirm that the above information is true and correct and supply this information to apply for a commercial credit account for a Company, Government Department, Partnership or Sole Trader only. I/We have read the Terms and Conditions Of Sale attached to this Credit Application and agree to abide by them.**

Signed: \_\_\_\_\_ Name: \_\_\_\_\_

Date: \_\_\_\_\_ Position: \_\_\_\_\_

### OFFICE USE ONLY:

Ref 1: \_\_\_\_\_

Ref 2: \_\_\_\_\_

Ref 3: \_\_\_\_\_

Checked By: \_\_\_\_\_ Date: \_\_\_\_\_ Approved: YES -or- NO

# Bacto Laboratories Pty Ltd.

ABN 60 000 525 244.

310-312 Elizabeth Drive (P.O. Box 8511), Mt Pritchard, NSW, 2170 Australia.

Ph: +61(0)2 9823-9000

Fax: +61(0)2 9601-8293.

Email: [info@bacto.com.au](mailto:info@bacto.com.au)

Web: [www.bacto.com.au](http://www.bacto.com.au)

## Terms and Conditions of Sale

### 1. DEFINITIONS

"**Bacto**" means Bacto Laboratories Pty Ltd ABN 60 000 525 244 or any of its subsidiaries including Plastianers Australia Pty Ltd..

"**Contract**" means a contract for sale by Bacto to the Customer of the Products and/or Services incorporating these Terms and Conditions.

"**Customer**" means the person (legal or natural) who accepts a written quotation of Bacto's for the sale of the Products or Services or whose order for the Products or Services is accepted by Bacto.

"**Product(s)**" means any product(s) sold to Customer pursuant to the Contract as specified on the Customer invoice.

"**Price**" means the charges for the Products or Services.

"**Services**" means the Service Offerings selected by Customer.

"**Standard Service Hours**" means the hours between 8.30 a.m. and 5.00 p.m. (in New South Wales) each day excluding Saturdays, Sundays and public holidays (in New South Wales). The Standard Service Hours may be changed by Bacto without prior notification.

"**Third Party Products**" means Products not manufactured or assembled or authorised by Bacto Laboratories Pty Ltd or any of its subsidiary companies and supplied to Bacto by third parties for resale by Bacto.

"**Territory**" means Australia.

### 2. FORMATION OF CONTRACT

**2.1** Bacto shall sell and the Customer shall purchase the Products and/or Services, as principals only, to the intent and with the effect that no other party shall have any rights or obligations or be entitled to sue or be sued, under the Contract

**2.2** The Products sold and/or Services rendered are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by Customer. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions.

**2.3** A Contract shall only come into existence when Bacto's written quotation is signed by Customer or when Bacto receives Customer's order and such signed quotation/order is confirmed and accepted by Bacto in writing or by delivery of the order, whichever is the earlier.

**2.4** No variation or amendment of these Terms and Conditions shall be binding on Bacto unless confirmed by it in writing.

**2.5** All sales will be subject to satisfactory credit approval, either in respect of commercial credit account terms, credit card application or payment. In placing an order with Bacto, Customer grants approval to Bacto to seek trade references from customer supplied referees and from credit reporting agencies a credit report to permit the granting of credit under the Privacy Act or similar legislation.

### 3. ORDERS, PRICE AND PAYMENT

**3.1** Unless credit terms have been expressly agreed by Bacto, payment for the Products or Services shall be made in full before physical delivery of Products or Services to or at the delivery location.

**3.2** All invoices are payable without discount of any kind in the denomination stated in the quotation. In no circumstances shall the Customer be entitled to make any deduction, set off or to withhold payment for any reason whatsoever.

**3.3** The price of the Products and/or Services shall be Bacto's quoted price or where no price has been quoted (or a quoted price is no longer valid), the price listed in Bacto's published price list current in the Territory at the date of the formation of the Contract.

**3.4** All prices quoted in writing are valid for the period specified on the quotation or until earlier acceptance by the Customer. Where an amendment to a quotation is required, Bacto shall supply any amendments to quotations in writing.

**3.5** Prices are exclusive of all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/duties/taxes. Taxes imposed on Bacto in connection with the sale, delivery or use of the Products or Services purchased pursuant to these Terms and Conditions including without limitation in connection with interest on overdue payment shall be paid by the Customer and will appear as separate items on Customer's invoice.

**3.6** Time for payment is of the essence. Bacto reserves the right to charge interest on sums overdue, on a day to day basis, as well after as before any judgment, from the due date for payment thereof to the date of actual payment

(both days inclusive) at the rate of 2% above the base commercial floating rate of Westpac Banking Corporation. Such interest shall be paid on demand.

**3.7** If an order is placed with a total price of less than \$50 excluding GST Bacto reserves the right to impose a \$10 'under minimum order value' charge to the order.

### 4. THE PRODUCTS

**4.1** Bacto may revise and/or discontinue Products at any time without notice as part of Bacto's policy of on-going Product up-date and revision. Revised or updated Products will have the functionality and performance of the Products ordered. The Customer accepts that Bacto's policy may result in differences between the specification of Products delivered to the Customer and the specification of Products ordered.

### 5. SOFTWARE

**5.1** All software provided under these Terms and Conditions are furnished subject to the terms and conditions of the license agreement relating to that software. Software license agreements may be packaged with the software, may be separately provided to Customer for signature or may require on-screen acceptance. Customer acknowledges its obligations to abide by such license agreements. Customer acknowledges that Bacto does not warrant any software under these Terms and Conditions. All software is warranted in accordance with the license agreement that governs its use.

**5.2** Where the terms "sale" and "purchase" are used herein in relation to software, whether by reference to the Products or otherwise, such terms shall mean the sale and purchase of the license to use the software. All rights, title or interest in respect of the intellectual property rights in the software remain with Bacto or the licensor of the software at all times.

### 6. TITLE AND RISK

**6.1** Title to and risk in the Products shall pass to the Customer upon delivery of the Products to Customer or the passing of the Products to the Customers agent or sub-contracted freight agent. Title to those Products which are software shall remain with the applicable licensor(s) at all times.

### 7. DELIVERY

**7.1** Bacto shall deliver the Products to the place of delivery designated by Customer and agreed to by Bacto as evidenced in Customer's invoice ("Delivery Address").

**7.2** Bacto may, at its discretion, deliver the Products by installments in any sequence. Where the Products are so delivered by installments, each installment shall be deemed to be the subject of a separate contract and no default or failure by Bacto in respect of any one or more installments shall breach the Contract in respect of Products previously delivered or undelivered Products.

**7.3** Any dates quoted by Bacto for the delivery of the Products are approximate only and shall not form part of the Contract. Bacto shall not be liable for any delay in delivery of the Products and/or Services, howsoever caused.

**7.4** If the Customer fails to take delivery of the Products or any part of them when they are made available to it or fails to provide any instructions, documents, licenses, consents or authorisations required to enable the Products to be delivered on the due date, Bacto shall be entitled, upon giving written notice to the Customer, to store or arrange for storage of the Products whereupon risk in the Products shall pass to the Customer, delivery shall be deemed to have taken place, and the Customer shall pay to Bacto all costs and expenses (including extra delivery, storage and insurance charges) arising from its failure.

### 8. ACCEPTANCE OF PRODUCTS

**8.1** Unless the Customer notifies Bacto to the contrary on the day of delivery and such notification is confirmed in writing within two days, the Products shall be deemed to have been accepted by the Customer as being in good condition and in accordance with the Contract. The Customer shall not be entitled to withhold payment of all or any of the Price of the Products whilst any claim is being investigated by Bacto.

#### **8.2 Return Policy**

All returns must be authorised by Bacto Laboratories Pty Ltd within 30 days of the invoice date where the customer shall be given a Goods Return Number. All returns must be accompanied with a copy of the original invoice and a Goods Return within 30 days from the invoice date. Within thirty (30) days of purchase, we will replace or repair, at our sole discretion, any product that is deemed defective. After 30 days, the manufacturer's warranty process must be followed. All non-defective returns authorised by Bacto Laboratories Pty Ltd MAY BE subject to a 15% restocking fee, and must be returned within 30 days from date of invoice. Any refund or credit will not include any shipping and

handling charges forming part of the purchase price unless goods delivered were incorrect due to a Bacto error. Bacto must receive all returned Products in as-new or as-shipped-by-Bacto condition, including conformance to invoiced specification, manuals, power cables, and other items included.

### **8.3 Cancellation Of Contract Orders (Before or After Delivery)**

All cancellations must be requested in writing. Bacto reserves the right to refuse cancellation on special product Contract orders that may be purchased in for or manufactured for the fulfillment of a contract. Bacto may choose to offer a cancellation fee to recover costs incurred in the preparation or delivery of the contract that will be invoiced to the Customer and must be paid to cancel the Contract order.

## **9. WARRANTY**

**9.1** Unless specified otherwise, Bacto warrants to the Customer that Bacto branded Products (excluding Third Party Products and software), will be free from defects in materials and workmanship affecting normal use for a period of one year from invoice date ("Standard Warranty").

**9.2** This Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorised by Bacto, usage and/or storage and/or installation not in accordance with Product instructions, failure to perform required preventative maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than Bacto personnel or any person authorised by Bacto, to adjust, repair or support the Products and problems caused by use of parts and components not supplied by Bacto. The Standard Warranty does not cover any items that are in one or more of the following categories: software; external devices; accessories or parts added to the Product after the Product is shipped from Bacto; or accessories or parts that are not installed by Bacto.

**9.3** During the one-year period beginning on the invoice date, Bacto will repair or replace Products returned to Bacto's facility. Customer must prepay shipping and transportation charges, and insure the shipment or accept the risk of loss or damage during such shipment and transportation. Bacto will ship the repaired or replacement products to Customer with freight charged to customer.

**9.4** The warranty term for a spare part used in repairing Products ("Replacement Part") is 90 days from its installation in the Product or the remainder of the warranty term for the Product into which it is installed, whichever is longer. Bacto owns all parts removed from repaired Products. Bacto uses new and/or reconditioned parts made by various manufacturers in performing warranty repairs and building replacement Products. For the avoidance of doubt, the warranty term of a Product is not extended after its repair or replacement. Customer will pay Bacto for a Replacement Part when the part replaced is not returned by Customer to Bacto within 10 days after the date the Replacement Part was delivered to Customer by Bacto. Prices of the part replaced will be at Bacto's then current standard price.

**9.5** Bacto does not give any warranty that the Products are fit for any particular purpose and this Standard Warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are hereby excluded to the fullest extent permitted by law.

**9.6** The Customer agrees that, in relation to Third Party Products purchased through Bacto, where such of the Products are covered by a relevant manufacturer's warranty, then the Standard Warranty shall not extend to such Products and such manufacturer's warranty shall be the sole warranty in respect of such Products.

## **10. LIABILITY**

**10.1** Bacto's total liability under any Contract in respect of each event or series of connected events shall not exceed the Price paid for the subject Product.

**10.2** The Customer shall indemnify Bacto and keep Bacto fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or willful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.

**10.3** Bacto and Customer agree that Bacto will not be liable for Products not being available for use. Bacto shall not be liable to the Customer for any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of Products or Services, even if Bacto has been advised of their possibility.

**10.4** Any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Bacto shall be subject to correction without any liability on the part of Bacto.

**10.5** Customer acknowledges that the limitation of liability contained in this clause is reasonable and that the limitation provisions have been taken into account by Bacto in pricing the Products.

## **11. TRADE PRACTICES ACT**

**11.1** Under the Trade Practices Act 1974 ("Act"), where implied conditions and warranties cannot be excluded, Bacto's liability for breach of such conditions and warranties (other than a condition or warranty implied by section 69 of the Act) shall be limited, at Bacto's option, to (a) in the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring

equivalent goods; or the payment of the cost of having the goods repaired OR (b) in the case of services, the supplying of services again; or the refund of the cost charged for the servicing.

## **12. FORCE MAJEURE**

Neither party shall be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled to a reasonable extension of time for the performance of such obligations. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the party's reasonable control: difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure, telecommunications failures and disruptions, general unavailability of transport or breakdown in machinery/equipment.

## **13. EXPORT RESTRICTIONS**

**13.1** The Customer acknowledges that the Products licensed or sold hereunder, which may include technology and software, are subject to the export control laws and regulations of Australia and agrees to abide by those laws and regulations. Under Australian laws and regulations, the Products purchased may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the Products may not be sold, leased or otherwise transferred to, or utilised by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. The Customer further acknowledges that the Products may also be subject to the laws and regulations of the country in which the Products are received, and that the Customer will abide by such laws and regulations. The Customer understands that applicable requirements or restrictions may vary depending on the Products delivered and may change over time and that, to determine the precise controls applicable to the products acquired, it may be necessary to refer to relevant laws and regulations.

## **14. CONFIDENTIALITY**

Each party shall treat as confidential all information obtained from the other pursuant to a Contract which is marked "confidential" or the equivalent or has the necessary quality of confidence about it and shall not divulge such information to any persons (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If Bacto shall appoint any sub-contractor then Bacto may disclose confidential information to such sub-contractor subject to such sub-contractor giving an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

## **15. GENERAL**

**15.1** In Territories where this is relevant, nothing in these Terms and Conditions shall affect the statutory rights of a Customer dealing with Bacto as a consumer where such rights cannot lawfully be excluded or superseded by contract. In the event of the conflict between these Terms and Conditions and the statutory rights of the Customer, the statutory rights of the Customer shall prevail.

**15.2** While Bacto can at any time assign Sub-Contracts to any affiliate or related corporation in relation to a contract, neither party shall assign or otherwise transfer any Contracts or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other.

**15.3** If any particular provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question shall not be affected thereby.

**15.4** No forbearance, delay or indulgence by either party in enforcing the provisions of these Terms and Conditions shall prejudice or restrict the rights of that party, nor shall any waiver of its rights operate as a waiver of any subsequent breach, and no right, power or remedy herein conferred upon or reserved for either party, is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

**15.5** All notices shall be in writing and shall be sent to the address of the recipient set out in the Contract or applicable invoice, or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

**15.6** The headings to the clauses of these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.

**15.7** These Terms and Conditions shall be governed by and construed in accordance with the laws of New South Wales and shall be subject to the non-exclusive jurisdiction of the courts of New South Wales

- End Of Term & Conditions Of Sale -