

General Conditions of Sale and Supply

1. General

- (a) In these Conditions, "the Buyer" means the person(s), firm or company purchasing the Products from the Seller (see overleaf), "the Seller" means the Invoicing Unit specified in the Contract, "the Contract" means the written order confirmation and/or the invoice (overleaf) including these Conditions, issued by the Seller for the sale of the Products to the Buyer, "the Products" means the Products agreed in the Contract to be supplied to the Buyer by the Seller (including any parts of them).
- (b) All trade terms set out in the Contract shall be given the meanings set out in the ICC rules for the interpretation of trade terms ("INCOTERMS 2000") as amended from time to time.
- (c) The Conditions apply to all the Seller's sales and the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- (d) Each order for Products by the Buyer from the Seller shall be deemed to be an offer by the Buyer for purchase of Goods subject to these Conditions. No order placed by the Buyer shall be deemed to be accepted by the Seller until the written Contract is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

2. Quotations

Quotations, when no commercial agreement or offer has been made, are valid for 30 days from issue date.

3. Product

Any information in the Seller's literature including price lists is for general information only and do not form a part of the Contract. The Seller reserves the right to alter the formulation of Product without notice and where the Buyer has specified that the Product should possess certain characteristics, or where characteristics are described by the Seller, including on a Certificate of Conformity, then in all cases such characteristics are subject to reasonable commercial tolerances.

4. Price

- (a) The Seller reserves the right upon notice at least 14 days before delivery to renegotiate the price of the Product to compensate any increase which has arisen in the cost to the Seller of manufacturing or acquiring or delivering the Product.
- (b) Where shipment includes returnable containers or pallets, these will be charged extra at the Seller's rate then in force (and paid for by the Buyer promptly on receipt of the Seller's invoice) unless received back by the Seller carriage paid in good condition within 3 months of delivery.

5. Cancellation

The Buyer cannot cancel the contract without consent of Seller. A condition for such cancellation is that the Buyer shall indemnify the Seller against all loss arising out of the cancellation.

6. Payment

- (a) The terms of payment specified in the Contract shall apply. However, if the Buyer has defaulted in payment of any sum, then the Seller may demand payment in cash for any Product on notice that is ready for despatch. The Seller may withhold possession of any Product until he has received payment of all sums due to him.
- (b) Any credit allowed by the Seller on any part of any Product shall be without prejudice to his right to refuse to give up possession of any other part thereof except against payment.
- (c) Payments due from the Buyer shall be made in full and not by instalments unless the Seller shall agree in writing. If the Buyer fails to pay an instalment in due time the Seller is entitled to treat such failure as a repudiation of the whole contract by the Buyer and to recover damages for such a breach of contract.
- (d) Interests on all sums due from the Buyer but not paid on the due date shall accrue and be paid by the Buyer at the rate of 12% effective from the day following the overdue date.
- (e) Payment shall be made in the currency and to the terms of the contract at the Seller's address specified in the Contract or otherwise as Seller may direct.

7. Delivery

- (a) All delivery dates are estimates only and shall not be of the essence. In no circumstances shall the Seller be liable to compensate the Buyer for non- or late delivery of any Product or for any consequential or other loss arising therefrom.
- (b) If the Seller is prevented or restricted from delivering any Product by reason of war, riot, explosion, fire, flood, strike, lock-out, shortage of materials or labour or other cause beyond the Seller's control (Force Majeure), the time for delivery shall be extended by a period equal to that during which such cause prevents or restricts delivery; but buyer shall take and pay for any part of the Product which the Seller is able to deliver.
- (c) The Seller shall be entitled to deliver the Product in one or more consignments.
- (d) In these terms "delivery" means delivery in accordance to the terms in the Contract.
- (e) The Seller may suspend and/or cancel any deliveries if the Buyer defaults by unjustified refusal of delivery of any Product or by non- or late payment of any sum due to the Seller, or by becoming insolvent.
- (f) The Seller may deliver up to 10% more or less than the quantity or volume of any Product ordered and the invoiced amount therefore shall be adjusted pro rata to the amount delivered.

8. Passing of Risk and Property

- (a) Risk of loss for damage to the Products shall pass to the Buyer according to Incoterms 2000. Such rules shall apply regardless of who pays shipping costs or upon storage of the Products for the benefit of the Buyer at Buyer's expense.
- (b) Notwithstanding delivery and the passing of risk in the Products, title and property in the Products, including full legal and beneficial ownership, shall not pass to the Buyer

until the Seller has received in cash or cleared funds payment in full for all Products delivered to the Buyer under this and all other Contracts between the Seller and the Buyer and until such receipt the Buyer shall hold the Products as bailee for the Seller and the following provisions of this Clause 8 shall apply.

- (c) Payment of the full price of the Products shall include the amount of any interest or other sum payable under the terms of this and all other Contracts between the Seller and the Buyer under which the Products were delivered.
- (d) If the Buyer sells or disposes of any Products the Buyer shall hold on trust for the Seller, the Buyer shall pay to the Seller forthwith upon demand:
- (i) if the Products have not been mixed with or incorporated into other Products or processed, all proceeds of sale; or
- (ii) if the Products have been mixed with or incorporated into other Products or processed, a just proportion of the proceeds of sale.
- (e) The Buyer shall not:
- (i) pledge any Product or documents of title thereto, or allow any lien to arise thereon;
- (ii) process any Product other than in the ordinary course of the Buyer's business;
- (iii) dispose of any Product or documents of title thereto or any interest therein.
- (f) If the Buyer defaults in the punctual payment of any sum he owes to the Seller then the Seller shall be entitled to the immediate refund of all Products sold by the Seller to the Buyer in which property has not passed to the Buyer and the Buyer hereby authorises the Seller to recover such Product and to enter any premises of the Buyer for that purpose. Demand for recovery of any Product by the Seller shall not of itself discharge either the Buyer's liability to pay the Full Price and take delivery of such Product or of the Seller's right to sue for any sums due.

9. Inspection of Goods

- (a) The Buyer shall inspect the Product immediately on Delivery and shall within 7 days from Delivery give notice in writing to the Seller of any apparent defect, or other reason that the Product are not in accordance with the Contract. If the Buyer fails to give such notice, the Product shall be presumed to be free from any defect, which would be apparent on reasonable examination, and to have been accepted by the Buyer. If such Product are shown as not in accordance with the contract or defective, the Buyer shall be entitled to the replacement thereof or to the refund of the purchase price against return of such Product, at the Seller's choice.
- (b) In the event of non-delivery of all or part of any Product the Buyer must give notice thereof to the Seller within 7 days of receipt by the Buyer of notice from the Seller that Product have been despatched. If the Buyer fails to give such notice the Seller shall be under no liability in the Buyer's respect of such non-delivery provided that clause 9 (c) shall continue to apply.
- (c) In case of land transportation, if any Product are lost or damaged in transit and the Buyer so notifies the Seller 2 clear days before notice is required to be given to the carrier of the loss or damage then the Seller will, without undertaking any liability, notify the carrier of the claim on the Buyer's behalf.
- (d) For deliveries by ship, a marine insurance policy shall be obtained by the party stated in the Contract at the Buyer's cost. If the Seller is to obtain such insurance, the insured value of relevant Product shall be the C.I.F. cost plus 10%. Notwithstanding Incoterms, such insurance shall be subject to Institute Cargo Clause (A)(Clause No. 252) and Institute Strikes Clauses (Cargo)(Clause No. 256) and to the Institute Clauses on war risks. The Seller shall incur no liability whatsoever arising from its obtaining or failure to obtain such insurance.

10. Use of Goods

- (a) The Seller hereby gives notice to the Buyer that the Seller has available information and literature ("Safety Literature") concerning the conditions necessary to ensure that the Product will be safe when properly used, which is available to the Buyer free on request.
- (b) Without prejudice to the other provisions of this Clause 10, if the Seller sells any Product of a lesser or different grade than prime and described as such upon sale, then the Buyer hereby undertakes:
- (i) not to use or process any of such Product in a manner inappropriate to its grade or quality;
- (ii) not to deal with or dispose of any such Product to any person unless the Buyer has informed such person in writing of the correct grade or quality of such Product and imposed upon such person contractual obligations equivalent to those in this sub-paragraph (ii) (as regards any other person to whom such Product or any interest therein may be transferred) and also sub-paragraph (i) of this Clause.
- (c) The Buyer hereby agrees with and undertakes to the Seller that:
- (i) where the Buyer incorporates any Product into or uses them in the manufacture of other Products, the Buyer will ensure that such Product are fit for such use, and that such use is a correct application for such Product; and
- (ii) it shall comply with (and shall procure that any person to whom any Product are resold shall comply with) all Safety Literature and other written instructions and recommendations for use notified by the Seller to the Buyer (including, without limitation, on any delivery note).
- (d) The Buyer hereby undertakes fully to indemnify the Seller on demand against all claims, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if

established would indicate a breach of any undertaking given by the Buyer in this Clause 10.

11. Defects after Delivery and Fitness for Purpose

- (a) Product conforming to specification shall, by their nature, be deemed fit for the Buyer's purpose and of satisfactory quality. If the Buyer becomes aware of any defect or alleged defect in any Product and continues to use such Product or other Product of the same specification without requiring the Seller to replace such Product then the Buyer shall be deemed for all purposes to have accepted such defect or alleged defect in such Product supplied subsequently.
- (b) The Seller shall have no liability whatsoever in respect of:
- (i) any defect or lack of fitness if the Seller has produced the Product in accordance with the Buyer's own technical specification and such defect arises there from; or
- (ii) any defect or lack of fitness arising from the manner in which any Product are processed or incorporated into other Product by the Buyer or any third party; or
- (iii) any direct or indirect loss or damage to any business or reputation, or to any profits, of the Buyer or any third party, arising in connection with the Product.
- (c) These terms set out the Seller's entire liability in respect of the Product and the Seller's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express or implied statutory or otherwise in respect of fitness for any particular purpose of the Product or otherwise howsoever except any implied by law or statute and which by law or statute cannot be excluded. Save as provided in these terms and except as aforesaid the Seller shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Product or failure to correspond to specification or for any injury, damage or loss resulting from such defects.

12. Indemnity

The Buyer hereby undertakes fully to indemnify the Seller on demand in respect of all damage injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of any Product if and to the extent that the damage injury or loss is caused partly or wholly directly or indirectly by the negligence or other default of the Buyer or its servants or agents or by any breach by the Buyer of its obligations to the Seller hereunder.

13. Patents, trademarks, etc

- (a) The Product is sold subject to the rights of any person, whether in respect of any patent, trademark, registered design, copyright, confidentiality, requirement and any other analogous or similar right, applicable to the sale or use of the Product in any part of the world and the Buyer hereby agrees in this respect to accept such title to the Product as the Seller may have subject to all and any such rights.
- (b) Where the Product is produced according to designs or configurations or by processes specified or supplied by the Buyer, the Buyer undertakes to the Seller that the Product as so designed or configured and/or the processes so used do not infringe the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidentiality requirement or otherwise howsoever, which could prevent or restrict the sale or use of the Product or the use of such processes in any part of the world, and the Buyer hereby undertakes fully to indemnify the Seller on demand against all actions, suits, claim, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the undertakings contained in this clause 13 (b).

14. Choice of Law and Arbitration

- (a) The Law of the country where the Seller (the Invoicing Unit defined in the Contract) is legally registered shall govern this agreement.
- (b) Any dispute or claim arising in connection with this agreement, which the parties fail to settle, shall be finally settled by arbitration according to the Rules of Arbitration and Conciliation of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The Arbitration procedures shall take place in the capital city of the country of governing law, or such other place as the parties may agree.

15. Assignment and applicability

- (a) The Buyer shall not assign any of his rights or obligations under the contract without the consent in writing of the Seller, which may if given be on such terms as to guarantee or indemnify or otherwise as the Seller thinks fit.
- (b) The Contract and these Conditions constitute the entire agreement between the parties for the sale of the Product and apply except to the extent that the parties shall otherwise agree in writing.

16. Notices

Any notice given under or pursuant to the contract shall be in writing and sent in first class post or other faster postal service, or fax or other means of telecommunication in permanent form to the address or relevant telecommunications number of the addressee shown in the Contract or such other address or number as such party may have substituted therefore by notice to the other party. Such notice shall be deemed validly given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.